

# First Reading

## 4000 SERIES - PERSONNEL

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### **Title IX**

**P4000.1**

The Sharon Board of Education (Board) policy is to maintain a learning and working environment free from any form of sex discrimination or sexual harassment. The Board agrees to comply with Title IX of the Education Amendments of 1972 and the Regulations as amended in the Final Rule promulgated pursuant thereto.

The Board, as required, will respond whenever any employee has notice of sexual harassment, including allegations of sexual harassment. Title IX applies to persons in this School because its education programs or activities receive Federal financial assistance. This policy applies to all of the School's programs or activities, whether such programs or activities occur on or off campus.

The School's response will be triggered by notice to a Title IX Coordinator, or to an official with authority to institute corrective measures on the recipient's behalf, which charges a school with actual knowledge.

### **Definitions**

**Sex discrimination** for purposes of this Title IX policy occurs when an individual, because of his or her sex, is denied participation in or the benefits of any program or activity receiving federal financial assistance. It includes when the School, as an employer, refuses to hire, disciplines or discharges any individual, or otherwise discriminates against an individual with respect to such individual's compensation, terms, conditions or privileges of employment on the basis of the individual's sex.

**Sexual harassment** for purposes of this Title IX policy includes any of the three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect:

1. Any instance of *quid pro quo* harassment by a school's employee;
2. Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person's equal access to the School's educational programs or activities; or
3. Any instance of sexual assault (as defined in 20 U.S.C.1092 (f)(6)(A)(v)), dating violence (as defined in 34U.S.C. 12291(a)(10)), domestic violence (as defined in 34U.S.C.12291(a)(8)), or stalking, (as defined in 34 U.S.C. 12291(a)(30)).

(This definition does not make sexual harassment dependent on the method by which the harassment is carried out.)

# First Reading

**Program or activity** includes those locations, events, or circumstances over which the School exercises substantial control over both the alleged harasser (respondent) and the context in which the sexual harassment occurred.

**Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to the School's Title IX Coordinator or to any employee of the school district.

**Title IX Coordinator** is the individual designated and authorized by the Board to coordinate the School's Title IX compliance efforts.

**Deliberately indifferent** means a response to a Title IX sexual harassment report that is not clearly unreasonable in light of the known circumstances.

**Complainant** is the individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Respondent** is the individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Formal complaint** is the document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the School investigate the allegation of sexual harassment.

**Document filed by a complainant** is a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

**Supportive measures** are individualized services reasonably available that are non-punitive, non-disciplinary and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment. These measures are without charge to a complainant or a respondent and may be offered before or after the filing of a formal complaint or when no complaint has been filed.

## **Notifications**

The School will notify all students, employees, applicants for admission and employment, parents or legal guardians of students, and all unions/bargaining units of the Title IX Coordinator's contact information. Such information will include the name or title, office address, e-mail address, and telephone number of the Title IX Coordinator. The required contact information will also be prominently displayed on the school website.

## **Reporting Procedures/Formal Complaint**

Any person may report sex discrimination, including sexual harassment, whether or not the person reporting is the person alleged to be the victim of conduct that would constitute sex discrimination or sexual harassment. Such report may be made in person, by mail, by telephone, or by e-mail,

## First Reading

using the contact information listed 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.

Such report may be made at any time, including during non-business hours, by using the Title IX Coordinator's listed telephone number, e-mail address or by mail to the office address.

Any third party as well as the complainant may report sexual harassment. This includes parents and guardians of students.

At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in the education program or activity of the School with which the formal complaint is filed.

### **School's Mandatory Response Obligations**

Sharon Center School recognizes its mandatory obligations to respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, as defined. The following mandatory response obligations will be fulfilled:

1. Supportive measures will be offered to the person alleged to be the victim ("complainant"). A respondent will not be disciplined without the School first following the Title IX grievance process, which includes investigating formal complaints of sexual harassment.
2. The Title IX Coordinator to discuss promptly with the complainant the availability of supportive measures, consider the complainant's wishes with respect to such measures, inform the complainant of the availability of such measures with or without filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.
3. Follow a grievance procedure that complies with the Title IX Final Rule before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent.
4. The rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment and Fourteenth Amendment will not be restricted when complying with Title IX.
5. Sexual harassment allegations in any formal complaint will be investigated. The formal complaint can be filed by a complainant or signed by the Title IX Coordinator.
6. The complainant's wishes regarding whether the School investigates will be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.
7. Compliance efforts, where applicable, to be coordinated with special education staff members.

If the allegations in a formal complaint do not meet the definition of sexual harassment contained within this policy, or did not occur in the School's educational program or in an activity against a

# First Reading

person in the United States, the School will, as required, dismiss such allegations for purposes of Title IX but may still address the allegations in any manner deemed appropriate by the School.

## **Notice of Allegation to the Parties**

The School will provide notice to the parties upon receipt of a formal complaint and on an ongoing basis if the School decides to include additional allegations during the course of the investigation.

The notice will inform the parties of the allegations that potentially constitute sexual harassment as defined in this policy and include the identities of the parties involved in the incident, sufficient details about the allegations, including the identities of the parties if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.

The written notice will also include notice of the applicable grievance process, and advise the parties that they may have an advisor of their choice and that the parties may inspect and review evidence obtained in the investigation.

The notice will also inform the parties of any provisions in the School's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

## **Grievance Process**

The School, as required, will utilize a consistent, transparent grievance process for resolving formal complaints of sexual discrimination and/or sexual harassment. Such process, as detailed in the administrative regulation accompanying this policy, applies to all Region 1 Schools equally.

A presumption that the respondent is not responsible for the alleged conduct shall be maintained until a determination is made regarding responsibility at the conclusion of the grievance process.

Allegations contained in any formal complaint will be investigated. Written notice shall be sent to both the complainant(s) and respondent(s) of the allegations upon receipt of the formal complaint.

During the grievance process and when investigating:

1. The burden of gathering evidence and burden of proof remains with the School.
2. The parties will be provided equal opportunity to present fact and expert witnesses and evidence.
3. The ability of the parties to discuss the allegations or gather evidence will not be restricted.
4. The parties will have the same opportunity to select an advisor of their choice, who may be, but need not be, an attorney.
5. The School will send written notice of any investigative interviews or meetings.

## First Reading

6. The School will send the parties, and their advisors, evidence directly related to the allegations, electronically or hard copy, with at least 10 days for the parties to inspect, review and respond to the evidence.
7. The School will send the parties, and their advisors, an investigative report, electronically or hard copy, that summarizes relevant information with at least 10 days for the parties to respond.
8. After the School has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision maker(s) will afford each party an 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.

**Note:** The final Title IX regulations specify that the decision-maker(s) in the investigation and adjudications of formal complaints cannot be the same person as the Title IX Coordinator or investigator(s).

The School will dismiss allegations of sexual harassment that do not meet the definition contained in this policy or if such conduct did not occur in a School educational program or activity against a person in the United States. Such dismissal is for Title IX purposes.

The School, in its discretion, may dismiss a formal complaint or allegations therein if the Title IX Coordinator is informed by the complainant in writing to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the School, or if specific circumstances prevent the School from gathering sufficient evidence to reach a determination.

The School will give the parties written notice of a dismissal, mandatory or discretionary, and the reasons for such dismissal.

The School, in its discretion, may consolidate formal complaints where the allegations arise out of the same facts.

The privacy of an individual's medical, psychological, and similar treatment records will be protected. Such records will not be accessed by the School, unless the party's voluntary, written consent is obtained. [The School 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 para professional acting in their recognized 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.]

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, per the Title IX Final Rule, are considered irrelevant, 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 offered to prove consent.

# First Reading

## **Standard of Evidence and Written Determination**

The School's Grievance Process, as required by the Title IX Final Rule, will state whether the standard of evidence to determine responsibility is the preponderance of evidence standard or the clear and convincing evidence standard. The School will provide the same standard of evidence to all formal complaints of sexual harassment whether the respondent is a student or an employee, including a faculty member.

The Board has chosen to use as the School's standard of evidence the

preponderance of evidence standard (*previous existing standard*)

clear and convincing evidence standard. (*a higher bar*)

The decision maker, who cannot be the Title IX Coordinator or the investigator, will issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant.

Such written determination shall be sent simultaneously to the parties and include information about how to file an appeal.

## **Appeals**

The School will offer both parties an appeal from a determination regarding responsibility and from the School's dismissal of a formal complaint or any allegations therein, based on the following:

1. Procedural irregularity that affected the outcome of the matter;
2. Newly discovered evidence that could affect the outcome of the matter; and/or
3. Title IX personnel (Title IX Coordinator, investigator(s), or decision maker(s)) that had a conflict of interest or bias, that affected the outcome of the matter.
4. Additional reasons identified by the School and offered equally to both parties.

The School will provide both parties a reasonable opportunity to submit a written statement in support of, or challenging the outcome. The appeal decision-maker will issue simultaneously to the parties, a written decision describing the appeal result and the rationale for the result. *The appeal decision-maker may not be the same person as the decision-maker(s) that reached the determination of responsibility or dismissal, the investigator(s) or the Title IX Coordinator.*

## **Informal Resolution Process**

The School may exercise the option to offer and to facilitate an informal resolution option, such as, but not limited to, mediation or restorative justice, provided both parties give voluntary, informed, written consent to attempt informal resolution.

## First Reading

The Board will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, the waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. The School will not require the parties to participate in an informal resolution process and will not offer such process unless a formal complaint is filed.

At any time prior to agreeing to a resolution, the Board recognizes the right of any party to withdraw from the informal resolution process and to resume the grievance/investigative process with respect to the formal complaint.

The Board specifically prohibits the offering or facilitating of an informal resolution process to resolve any allegation that an employee sexually harassed a student.

### **Record Keeping**

The School will maintain for a period of seven years the records of each sexual harassment investigation, any disciplinary sanctions imposed on the respondent or remedies provided to the complainant; any appeal and the results of the appeal; informal resolution, if any, and the results of informal resolution; and the materials used to train coordinators, investigators, decision-makers and facilitators of informal resolution.

The School will also 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 basis for the complaint and the conclusion reached will be documented, as well as the measures taken to restore or preserve access to the school's educational program or activity. Reasons must be cited when supportive measures are not provided to a complainant.

### **Retaliation**

The School will maintain confidentiality regarding the identity of complainants, respondents, and witnesses, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA), as required by law, or as necessary to carry out a Title IX proceeding.

The School expressly prohibits retaliation against any individual for exercising Title IX rights

The school or person may not 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 a Title IX investigation or proceeding.

Complaints alleging retaliation may be filed according to the grievance procedures pertaining to sex discrimination.

The Board recognizes that the following does not constitute retaliation:

1. The exercise of rights protected under the First Amendment of the U.S. Constitution.

## First Reading

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

The charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

### **Training**

The Board will provide and/or make available training for any person designated as a Title IX coordinator, investigator, and decision maker and any person designated to facilitate an informal resolution process. Such training will include:

- The definition of sexual harassment under the new Final Rule
- The scope of the School's education programs and activities;
- The manner in which to conduct an investigation and grievance process, including appeals, hearings and informal resolution process, as applicable;
- How to serve impartially, including the avoidance of prejudgment of the facts at issue, conflicts of interest, and bias;
- The promotion of impartial investigations and adjudications of sexual harassment;
- A presumption that the respondent is not responsible for the alleged conduct until a determination is made regarding responsibility at the conclusion of the grievance process;
- Description of the range or list of the possible remedies the School may provide a complainant and disciplinary sanctions that can be imposed on a respondent, following determinations of responsibility;
- The utilization of the preponderance of evidence standard or the clear and convincing evidence standard;
- Issues of relevance of questions and evidence; and
- The creation of the investigative report to fairly summarize relevant evidence.

The School will, as required, retain its training materials for a period of seven years and to make such materials available on its website.

### **Nondiscrimination Notice**

The Board of Education, in compliance with federal and state law, affirms its policy of equal educational opportunity for all students and equal employment opportunity for all persons. The Board will not discriminate on the basis of sex in the education programs or activities it operates. This policy of nondiscrimination in the education program or activity also extends to employment and admission.

# First Reading

Notice of the Board's nondiscrimination policy and grievance procedure, including how to file or report sexual harassment and how the School will respond will be provided to applicants for admission and employment; students; parents or legal guardians; and unions or professional organizations holding agreements with the School.

This notice of nondiscrimination will be posted on the school website and placed in any handbooks provided to the above cited groups.

## Legal References:

United States Constitution, Article XIV

Civil Rights Act of 1964, Title VII, 42 U.S.C. 2000e2(a).

Equal Employment Opportunity Commission Policy Guidance (N915.035) on Current Issues of Sexual Harassment, Effective 10/15/88.

Title IX of the Education Amendments of 1972, 20 USCS §1681, et seq.

Title IX of the Education Amendments of 1972, 34 CFR §106, et seq.

Title IX Final Rule, 34 CFR §106.45, et seq., May 6, 2020

34 CFR Section 106.8(b), OCR Guidelines for Title IX.

Definitions, OCR Guidelines on Sexual Harassment, Fed. Reg. Vol 62, #49, 29 CFR Sec. 1606.8 (a0 62 Fed Reg. 12033 (March 13, 1997) and 66 Fed. Reg. 5512 (January 19, 2001)

The Clery Act, 20 U.S.C. §1092(f)

The Violence Against Women Act, 34 U.S.C. §12291(a)

Mentor Savings Bank, FSB v. Vinson 477 US.57 (1986)

Faragher v. City of Boca Raton, No. 97-282 (U.S. Supreme Court, June 26,1998)

United States Constitution, Article XIV

Civil Rights Act of 1964, Title VII, 42 U.S.C. S2000e2(a).

# First Reading

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Title IX of the Education Amendments of 1972, 34 CFR §106, *et seq.*

Title IX Final Rule, 34 CFR §106.45, *et seq.*, May 6, 2020

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*Mentor Savings Bank, FSB v. Vinson* 477 US.57 (1986)

*Faragher v. City of Boca Raton*, No. 97-282 (U.S. Supreme Court, June 26,1998)

Adopted:

# First Reading

## 4000 SERIES - PERSONNEL

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### **Title IX Regulation**

**R4000.1**

#### **Filing of a Formal Complaint**

The Sharon Board of Education (Board) encourages all victims of sexual discrimination based on the Title IX policy, whether students or employees, to promptly report such claims. Timely reporting of complaints facilitates the investigation and resolution of such complaints. Any person may report sex discrimination, including sexual harassment, whether or not the person reporting is the person alleged to be the victim of conduct that would constitute sex discrimination or sexual harassment.

Such report may be made in person, by mail, by telephone, or by e-mail, using the contact information listed 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.

Such report may be made at any time, including during non-business hours, by using the Title IX Coordinator's listed telephone number, e-mail address or by mail to the office address. Any third party as well as the complainant may report sexual harassment. This includes parents and guardians of students.

Any employee who believes that he/she has been sexually harassed or otherwise discriminated against on the basis of sex should submit a complaint to the Title IX Coordinator. If the Title IX Coordinator is the subject of the complaint, the written complaint should be submitted to the Superintendent of Schools.

The complaint should state the:

1. Name of the complainant,
2. Date of the complaint,
3. Date(s) of the alleged harassment/discrimination,
4. Name(s) of the harasser(s) or discriminator(s),
5. Location/manner where such harassment/discrimination occurred,
6. Names of any witness(es) to the harassment/discrimination,
7. Detailed statement of the circumstances constituting the alleged harassment/discrimination,  
and
8. Remedy requested.

# First Reading

At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in the education program or activity of the School with which the formal complaint is filed.

This grievance/investigative procedure shall be followed before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent.

Sexual harassment allegations in any formal complaint will be investigated. The formal complaint can be filed by a complainant or signed by the Title IX Coordinator.

The complainant's wishes regarding whether the School investigates will be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

If the allegations contained in a formal complaint do not meet the definition of sexual harassment contained within the policy, or did not occur in the School's educational program or in an activity against a person in the United States, the School will, as required, dismiss such allegations for purposes of Title IX but may still address the allegations in any manner deemed appropriate by the School.

The School will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who made a report or filed a formal complaint of sexual harassment, including any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness except as permitted by the Family Educational Rights and Privacy Act (FERPA) or required by law or to conduct any investigations or judicial proceeding under the final sexual harassment regulations.

Any employee making a complaint will be provided a copy of the Title IX policy and administrative regulation (#4000.1)

## **Definitions**

**Sex discrimination** for purposes of the Title IX policy occurs when an individual, because of his or her sex, is denied participation in or the benefits of any program or activity receiving federal financial assistance. It includes when the School, as an employer, refuses to hire, disciplines or discharges any individual, or otherwise discriminates against an individual with respect to such individual's compensation, terms, conditions or privileges of employment on the basis of the individual's sex.

**Sexual harassment** for purposes of this Title IX policy includes any of the three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect,

1. Any instance of *quid pro quo* harassment by a school's employee;
2. Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person's equal educational access; or

# First Reading

3. Any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking (as defined in the Violence Against Women's Act).

**Program or activity** includes those locations, events, or circumstances over which the School exercises substantial control over both the respondent and the context in which the sexual harassment occurred.

**Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to the School's Title IX Coordinator or to any employee of the school district.

**Title IX Coordinator** is the individual designated by the Board to coordinate its efforts to comply with Title IX responsibilities.

**Complainant** is the individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Respondent** is the individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Formal complaint** is the document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the School investigate the allegation of sexual harassment.

**Supportive measures** are individualized services reasonably available that are non-punitive, non-disciplinary and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment. Supportive measures may include counseling, course-related adjustments, modifications of work or class schedules, campus escort services, increased security and monitoring of certain areas of campus, and mutual restrictions on contacts between the parties.

## **Grievance/Investigative Process**

The following investigative procedure will be utilized upon the receipt of a written formal complaint or when knowledge of a sexual harassment allegation is made available to an employee of the School. The School personnel involved in the implementation of this process will operate under the presumption that the respondent is not responsible (a presumption of innocence) so that the School bears the burden of proof and the standard of evidence is correctly applied.

### **Step 1: Notification of the Involved Parties**

The Title IX Coordinator will notify the involved parties that a complaint exists, and also on an ongoing basis if the School decides to include additional allegations during the course of the investigation, and that an investigation will promptly begin.

The notice will contain information about the grievance/investigation process, including information about any informal resolution process, and sufficient details about the allegations at hand, the conduct allegedly constituting sexual harassment, and the date and location of the alleged

## First Reading

incident, if known, and include the identities of the parties involved in the incident, the complainant's and respondent's rights, the policy that the alleged behavior violates, and the contact information for the investigator.

The notice will contain a statement that the respondent is presumed not responsible for the alleged conduct and that responsibility will be determined at the conclusion of the grievance/investigation process.

The written notice will also advise the parties that they may have an advisor of their choice, who may be, but does not need to be, an attorney, and that they may inspect and review evidence obtained in the investigation, throughout the investigation.

The notice will also inform the parties of any provisions in the School's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

The notice can also be used to schedule an intake meeting, either in person or electronically, to discuss basic information about the allegations and to determine the next steps of the investigation.

The School's response will include refraining from disciplining a respondent without following the Title IX grievance/investigative process, which includes investigating the formal complaint of sexual harassment.

The Title IX Coordinator will discuss promptly with the alleged victim (complainant) the availability of supportive measures and consider the complainant's wishes with respect to such measures. The complainant will be offered such measures with or without the filing of a formal complaint. The process for filing a formal complaint will be explained to the complainant.

A complaint may be dismissed if the complainant notifies the Title IX Coordinator at any time that he/she wishes to withdraw the complaint or allegation. The complaint will also be dismissed if the respondent's enrollment or employment at Sharon Center School ends, or if specific circumstances prevent the School from gathering evidence sufficient to reach a determination about the complaint.

The School may choose to remove a respondent from its education program or activity on an emergency basis after the School has conducted a safety and risk analysis and determined that such emergency removal is necessary to protect a student or other individual from an immediate threat to physical health or safety.

The School may also, as applicable, place an employee-respondent on administrative leave during the pendency of the grievance/investigative process.

### **Step 2: Fact Gathering**

If the complainant decides to proceed with the investigative process, information is to be gathered related to the allegations. This process will include, but not be limited to, the collection of documents, audio and video recordings, social media posts, and cell phone records.

## First Reading

The complainant and the respondent are to be interviewed, asking them to explain their side of the occurrence(s) and their relationship with the other party. The names of potential witnesses and any other details that may be pertinent to the investigation shall be sought.

A party's written consent will be required before using the party's medical, psychological, or similar treatment records during the grievance/investigative process. The School will not access, consider, disclose, or otherwise use a party's records that are maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in such individual's capacity, unless the School obtains that party's voluntary written consent.

All questioning will exclude evidence about the complainant's sexual predisposition or prior sexual behavior unless such questions and evidence are offered to prove someone other than the respondent committed the conduct alleged by the complainant or if the questions or evidence are offered to prove consent.

The School recognizes that during the time frame needed to promptly conclude the grievance/investigative process there may be temporary delays based on good causes, including but not limited to, law enforcement involvement, absence of a party, witness or advisor, or translation or accommodation needs. Notice of such delays will be provided by the investigator explaining any reasons for the delay.

### **Step 3: Review and Analysis of Information**

The trained Title IX investigator, after collecting as much relevant information as possible, will evaluate such evidence without prejudice of the facts at issue and free from conflicts of interest or bias for or against either party.

The investigator will provide both the complainant and the respondent at least ten days to review the collected and provided information before any determination is reached regarding responsibility. Such review period is to allow for any additional information from either party or the opportunity to address a discrepancy. 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.

The investigator will then review, weigh, analyze, and compare the information to see if there is sufficient information to determine whether a violation occurred.

### **Step 4: Determine a Violation (Determinations of Responsibility)**

A separate decision-maker will determine if a violation has occurred. (The decision-maker is not the same person as the investigator or the Title IX Coordinator.) The School will apply its chosen standard of evidence to determine responsibility. The School shall provide the same standard of evidence to all formal complaints of sexual harassment whether the respondent is a student or an employee, including a faculty member.

# First Reading

The Board has chosen to use as the School's standard of evidence, the

- preponderance of evidence standard (*previous existing standard*)
- clear and convincing evidence standard. (*a higher bar*)

The *preponderance of evidence standard* of proof means that the information gathered concludes that the allegations are 'more likely than not' to be true, or more than 50 percent likely. This standard requires more convincing proof than 'probable cause' and less than "beyond a reasonable doubt.

The *clear and convincing evidence standard* of proof means that the evidence points to the allegations being "substantially more probable to be true" than not, or well over 50 percent likely.

## **Step 5: Written Report and Notification of Outcome to the Parties**

After a determination has been made, the final investigative report will be prepared. The report will contain the initial allegations, the policy violated, the parties involved, the evidence gathered, a summary of the interviews and any other relevant information, and an explanation of how and why the decision-maker reached the conclusions. The written determination will also include a statement of and rationale for result as to each allegation including a determination of responsibility, any disciplinary sanctions, and whether remedies to restore or preserve equal access to the educational program or activity will be provided.

A copy of the final report will be sent to each party at least ten days before it is finalized in order to give the respective parties the opportunity to respond.

After the outcome is finalized, a written determination of the outcome will be sent to both parties. This notice will include information about the outcome, reasons supporting the determination and, depending on the conclusion, the next steps in the Title IX process.

The School will implement remedies for a complainant if a respondent is found responsible for sexual harassment. Such remedies should be reasonably calculated to end the discrimination, and appropriate corrective action and/or disciplinary action aimed at preventing the recurrence of the harassment or discrimination, as deemed appropriate by the Superintendent or designee.

Remedies offered may include the same actions described as supportive measures, but remedies need not avoid punishing or burdening the respondent.

## **Step 6: Appeal Process**

After notification to the complainant and respondent of the outcome, either or both parties may appeal the decision in writing, within ten days, to the Superintendent of Schools or designee to request an administrative review. An appeal can be filed on the basis of procedural irregularity that affected the outcome, newly discovered evidence that was not reasonably available at the time of determination and could affect the outcome, and/or conflict of interest or bias of the Title IX

## First Reading

personnel (Title IX Coordinator, investigator, or decision maker) that affected or could affect the outcome of the matter. The School reserves its right to offer additional bases for an appeal which will be offered equally to both parties.

Such written appeal will be filed within thirty calendar days to the Superintendent of Schools, who will review the decision maker's written report, the information collected by the Title IX Coordinator and the investigator(s). The Superintendent will determine if further action and/or investigation is warranted. The Superintendent will respond to the party(s) requesting the appeal within fifteen school days following the receipt of the written appeal request.

**Note:** The decision maker for an appeal may not be the Title IX Coordinator, investigator, or initial decision maker. The appeal decision maker must have also received the training previously described.

### **Step 7: Informal Resolution Process**

The School will offer and facilitate an informal resolution option, such as, but not limited to, mediation or restorative justice, provided both parties, complainant and respondent, give voluntary, informed, written consent to attempt an informal resolution to the complaint.

The Board does require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, the waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. The School does not require the parties to participate in an informal resolution process and will not offer such process unless a formal complaint is filed.

At any time prior to agreeing to a resolution, the Board recognizes the right of any party to withdraw from the informal resolution process and to resume the grievance/investigative process with respect to the formal complaint.

The Board will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

### **Other Provisions**

If a sex discrimination complaint raises a concern about bullying behavior, the Title IX Coordinator will notify the Safe School Climate Specialist or designee who will coordinate any bullying investigation with the Title IX Coordinator in order to ensure that any such bullying investigation complies with the requirements of applicable Board policies.

Retaliation against any individual who complains pursuant to the Board's policy is strictly forbidden. The School will take the necessary actions to prevent retaliation as a result of filing a complaint or the involvement of any individual in the grievance/investigative process.

# First Reading

The School will 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 as detailed in the Title IX policy.

The District, in responding to any claim of sexual discrimination under Title IX, will never deprive any individual of his/her rights guaranteed under the U.S. constitution.

At any time, a complainant alleging sex discrimination or sexual harassment may file a formal complaint with the Office for Civil Rights, Boston Office, U.S. Department of Education, 8<sup>th</sup> Floor, 5 Post Office Square, Boston, MA 02109-3921 (1-617-289-0111)

The Title IX Coordinator for the District is Martha Schwaikert; whose office is located at 246 Warren Turnpike, Falls Village, CT 06031; and whose telephone number is 860-824-5639; and whose email address is mschwaikert@region1schools.org.

## Legal References:

United States Constitution, Article XIV

Civil Rights Act of 1964, Title VII, 42 U.S.C. §2000e2(a).

Equal Employment Opportunity Commission Policy Guidance (N915.035) on Current Issues of Sexual Harassment, Effective 10/15/88.

Definitions, OCR Guidelines on Sexual Harassment, Fed. Reg. Vol 62, #49, 29 CFR Sec. 1606.8 (a) 62 Fed Reg. 12033 (March 13, 1997) and 66 Fed. Reg. 5512 (January 19, 2001)

The Clery Act, 20 U.S.C. §1092(f)

The Violence Against Women Act, 34 U.S.C. §12291(a)

*Mentor Savings Bank, FSB v. Vinson* 477 US.57 (1986)

*Faragher v. City of Boca Raton*, No. 97-282 (U.S. Supreme Court, June 26, 1998)

Title IX of the Education Amendments of 1972, 20 USCS §1681, *et seq.*

Title IX of the Education Amendments of 1972, 34 CFR §106, *et seq.*

Title IX Final Rule, 34 CFR 106.45 *et seq.*, May 6, 2020

34 CFR Section 106.8(b), OCR Guidelines for Title IX.

# First Reading

Definitions, OCR Guidelines on Sexual Harassment, Fed. Reg. Vol 62, #49, 29 CFR Sec. 1606.8 (a) 62 Fed Reg. 12033 (March 13, 1997) and 66 Fed. Reg. 5512 (January 19, 2001)

The Clery Act, 20 U.S.C. §1092(f)

The Violence Against Women Act, 34 U.S.C. §12291(a)

*Mentor Savings Bank, FSB v. Vinson* 477 US.57 (1986)

*Faragher v. City of Boca Raton*, No. 97-282 (U.S. Supreme Court, June 26,1998)

*Burlington Industries, Inc. v. Ellerth*, No. 97-569, (U.S. Supreme Court, June 26,1998)

*Gebbs v. Lago Vista Indiana School District*, No. 99-1866, (U.S. Supreme Court, June 26,1998)

*Davis v. Monro County Board of Education*, No. 97-843, (U.S. Supreme Court, May 24, 1999.)

Connecticut General Statutes

46a60 Discriminatory employment practices prohibited.

Conn. Agencies Regs. §46a-54-200 through §46a-54-207

Constitution of the State of Connecticut, Article I, Section 20.

P.A. 19-16 An Act Combatting Sexual Assault and Sexual Harassment

Regulation Approved: