

**Policy JCAC: Harassment****Henry County Schools****Original Adopted Date:** 02/01/1995 | **Last Revised Date:** 06/08/2020 | **Last Reviewed Date:** 06/08/2020**Status:** ADOPTED**Sexual Harassment Policy**

It is the policy of Board to maintain an environment that is free from all forms of discrimination and, harassment on the basis of sex. The Henry County Board of Education (the "Board") does not discriminate on the basis of sex in the education program or activity that it operates. The Board is required by Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681, et seq.) and its regulations (34 C.F.R. § 106.8) not to discriminate in such a manner. The requirement not to discriminate in the education program or activity extends to admission and employment. Inquiries about the application of Title IX and its regulations to the Board may be referred to the Board's Title IX Coordinators, the Assistant Secretary for Civil Rights of the Department of Education, or both. Retaliation against individuals who file complaints of alleged sexual harassment or those who assist in the investigation of complaints of alleged sexual harassment is expressly prohibited.

It shall be a violation of this JCAC policy for any student or employee of the District to engage in sexual harassment. Sexual harassment is defined as conduct on the basis of sex that satisfies one or more of the following criteria:

1. An employee of the Board conditioning the provision of an aid, benefit, or service of the Board on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Board's education program or activity; or
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Any student or employee who believes that he or she has been exposed to sexual harassment or retaliation in the Board's education program or activity should immediately report the act to the Board's Title IX Coordinators. Any employee that is on actual notice of sexual harassment or retaliation must immediately report the act to the Board's Title IX Coordinators.

Any student or employee has the right to file a formal complaint alleging sexual harassment or retaliation to the Board's Title IX Coordinators. The Board has adopted a grievance process to address all formal complaints filed. That grievance process:

1. Treats complainants and respondents equitably.
2. Requires an objective evaluation of all relevant evidence.
3. Assures that all Title IX Coordinators, investigators, decision-makers, or any person designated to facilitate an informal resolution process do not have a conflict of interest or bias.
4. Presumes that the respondent is not responsible for the alleged conduct.
5. Provides for reasonably prompt time frames for the conclusion of the grievance process.
6. Describes the range of possible disciplinary sanctions and remedies following a determination of responsibility.
7. Adopts the preponderance of the evidence standard for complaints against both students and employees.

8. Provides for and describes the appeal process.
  9. Describes the range of supportive measures available to both complainants and respondents.
  10. Does not require, allow, rely upon, or otherwise questions or evidence that constitute or seek the disclosure of information protected under a legally recognized privilege unless it has been waived.
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## Regulation JCAC-R(1): Harassment - Sexual Harassment Grievance Process

Henry County Schools

Original Issued Date: 07/29/2020 | Last Reviewed Date: 07/29/2020

Status: ISSUED

Original Issue Date: 07/29/2020

Pursuant to Henry County Board of Education (the "Board") Policy JCAC, Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681, *et seq.*) and its regulations (34 C.F.R. § 106.8), together referred to as "Title IX", the Board hereby adopts the following grievance process for handling formal complaints of sexual harassment within the Henry County School District (the "District").

### I. Definitions

- A. As outlined in Policy JCAC and defined in Title IX, the following definitions constitute "sexual harassment" for purposes of this grievance process. Sexual harassment is defined as conduct on the basis of sex that satisfies one or more of the following criteria:
1. An employee of the Board conditioning the provision of an aid, benefit, or service of the Board on an individual's participation in unwelcome sexual conduct;
  2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Board's education program or activity; or
  3. Any of the following as defined in federal law. Should these federal definitions change, so shall the definitions within this regulation to comply with law:
    - a. sexual assault as defined in the Clery Act ("Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act", 20 U.S.C. 1092(f)(6)(A)(v)): Any sexual act directed against another person, forcibly and/or against the person's will; not forcibly or against the person's will when the victim is incapable of giving consent.
    - b. dating violence as defined in the VAWA ("Violence Against Women Act" of 1994, 34 U.S.C. 12291(a)(10)): Any act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of the relationship; and the frequency of the interaction of the persons involved in the relationship.
    - c. domestic violence as defined in the VAWA ("Violence Against Women Act" of 1994, 34 U.S.C. 12291(a)(8)): Any felony or misdemeanor act of violence committed by a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; a person who is cohabitating with the victim or who has cohabited with the victim as a spouse or intimate partner; a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or; 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 this jurisdiction.
    - d. stalking as defined in the VAWA ("Violence Against Women Act" of 1994, 34 U.S.C. 12291(a)(30)): May be defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

B. The following are considered "parties" to this grievance process:

1. Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
2. Respondent: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

C. The Superintendent including any designee(s) is responsible for day-to-day oversight of this grievance process.

D. The following have been designated in the respective roles under this grievance process:

1. Title IX Coordinator(s): the District shall recognize each school principal or leader with site-based responsibility for day-to-day compliance with this grievance process.
2. Investigator(s):
  - a. In all matters where both the complainant and respondent are students, the District shall recognize the Title IX Investigator in the Office of Legal Compliance with districtwide responsibility for day-to-day compliance with the investigator duties within this grievance process.
  - b. In any matter where either the complainant or respondent is employee of the Board, the District shall recognize the HR investigator in the Division of Human Resources with districtwide responsibility for day-to-day compliance with the investigator duties within this grievance process.
3. Decision-Maker(s):
  - a. In all matters where both the complainant and respondent are students, the District shall recognize the Strategic Executive in the Office of the Chief of Staff with districtwide responsibility for day-to-day compliance with the decision-making duties grievance process.
  - b. In any matter where either the complainant or respondent is employee of the Board, the District shall recognize the Employee Relations Executive Director in the Division of Human Resources with districtwide responsibility for day-to-day compliance with the decision-making duties within this grievance process.
  - c. In any case, the decision-maker(s) will not be either the Title IX Coordinator(s) or the investigator(s).
4. Appellate Decision-Maker: the District shall recognize the Superintendent or her/his designee with districtwide responsibility for day-to-day compliance with the appellate decision-maker duties within this grievance process.
5. Facilitator(s) of Informal Resolution:
  - a. In all matters where both the complainant and respondent are students, the District shall recognize the Executive Director of Legal Compliance of her/his designee with districtwide responsibility for day-to-day compliance with any informal resolution duties within this grievance process.
  - b. In any matter where either the complainant or respondent is employee of the Board, the District shall recognize the Leadership Development & Employee Service Executive Director in the Division of Human Resources with districtwide responsibility for day-to-day compliance with any informal resolution duties within this grievance process.

E. A person who is not the complainant(s), respondent(s), Title IX Coordinator(s), investigator(s), decision-maker, appellate decision-maker, or facilitator but who testifies, assists, or participates any manner in an

investigation, proceeding, or hearing as part of this grievance process is not a party.

F. A “formal complaint” is a 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.

## II. General Rules

- A. Schools must respond promptly to Title IX sexual harassment by offering supportive measures to the complainant and refraining from disciplining a respondent without following a Title IX grievance process. The grievance process must begin if a formal complaint is filed.
- B. Both the complainant(s) and respondent(s) will be treated equitably (fairly). This means for a complainant, the District will provide remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent. This means for a respondent, the District will impose disciplinary sanctions or any other actions that are not supportive measures against a respondent only after following this grievance process.
- C. As part of the grievance process, the Board will provide each party an equal opportunity to present “inculpatory” evidence (incriminating or placing guilt) and “exculpatory” evidence (freeing or clearing guilt). All relevant evidence will be evaluated objectively. No credibility determinations will be based on a person’s status as a complainant, respondent, or witness.
- D. Any grievance process may be temporarily delayed, or any timeline extended, for good cause in the sole discretion of the Superintendent or her/his designee. Good cause includes, but is not limited to, 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. In the event such good cause is found, the Superintendent or her/his designee will issue written notice to the complainant and the respondent of the delay or the extension and the reasons therefore.
- E. No employee will intimidate, threaten, coerce, or discriminate against any individual for exercising a right or privilege made possible under federal laws on Title IX or Board Policy JCAC, including if an individual has made a report or complaint, testified, assisted, or participated (or refused to participate in) any manner in an investigation, proceeding, or hearing as part of this grievance process.
- F. The identity of persons involved in the process will be kept confidential by the District unless required by law or to carry out this grievance process. This includes the complainant; the respondent; any witness; any individual(s) who reported for filed a complaint of sex discrimination; or any individuals(s) reported to be the perpetrator of sex discrimination.
- G. The District will not require a party to agree to waive his/her right to an investigation and adjudication of a formal complaint as a condition of enrollment, continuing enrollment, employment, continuing employment, or enjoyment of any other right.

## III. Supportive Measures Available

- A. Regardless of whether or not a formal complaint has been filed, the Board offers the following supportive measures, which are to be determined for individual complainant(s) and respondent(s) by the Title IX Coordinator(s): counseling by a school staff person, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual restrictions on contact between the parties, changes in classroom transition routes, increased security and monitoring of certain areas of the school campus, and/or a combination of local interventions and supports.
- B. Additional supportive measures may be available on a case-by-case basis, and notice will be provided pursuant to this grievance process.

#### IV. Burden and Evidentiary Matters

- A. The designated decision-maker will issue a determination regarding whether the respondent is responsible for the allegations of sexual harassment. Until a determination of responsibility is made at the conclusion of this grievance process, the respondent is presumed not responsible for the alleged conduct.
- B. The burden of proving responsibility for the allegations in a formal complaint rests on the District, not the complainant or respondent.
- C. The Board has adopted the preponderance of evidence standard for all formal complaints of sexual harassment against students and employees, including faculty, volunteers and certain third parties.
- D. The District will 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 that privilege has waived it.
- E. The District will not 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 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 (or that party's parent's) voluntary, written consent to do so. This restriction and process for consent applies equally to all parties; however, consent given to one party's advisor does not give consent to the other party's advisor if a timely request is not made.
- F. The District will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

#### V. Processing Complaints

- A. The District may combine formal complaints where the allegations of sexual harassment arise out of the same facts or circumstances concerning:
  - 1. allegations of sexual harassment against more than one respondent, or
  - 2. by more than one complainant against one or more respondents, or
  - 3. by one party against the other party.
- B. The District will not require the parties to participate in an informal resolution process.
- C. The District will not require or allow the use of an informal resolution process when a formal complaint has alleged that an employee has sexually harassed a student.
- D. Should any deadlines within this grievance process fall on a Saturday, Sunday, or federal or state recognized holiday, then the deadline shall be honored through the end of the following calendar or business day, respectively.

#### VI. Resolution of a Formal Complaint

- A. Once a formal complaint has been filed with a Title IX Coordinator(s), the coordinator(s) will provide a copy of the formal complaint to the relevant decision-maker, and the coordinator will cause written notice to be issued to the parties, to the extent they are known, within three business (3) days. That notice will include:
  - 1. Notice of the grievance process (Regulation JCAC);

2. Information about any informal resolution process and the availability of voluntarily engaging in any informal resolution process;
  3. Notice of the allegations of sexual harassment, including sufficient details known at the time, including the name 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;
  4. 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;
  5. A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
  6. A statement that the parties may inspect and review evidence gathered as part of the investigation; and
  7. A statement that the "false information" and "giving false information" sections of the Code of Conduct prohibit knowingly making false statements or knowingly submitting false information during the grievance process.
- B. If, during the course of the investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the foregoing notice, the Title IX Coordinator will provide notice of the additional allegations to the parties whose identities are known.
- C. Within ten business (10) days of the filing of the complaint, the decision-maker(s) must send written notice, including reasons, simultaneously to the complainant and respondent if the decision-maker makes an initial determination that the formal complaint must or should be dismissed.
1. The decision-maker(s) must dismiss the formal complaint if the conduct alleged (a) would not constitute sexual harassment even if proved; (b) did not occur in the recipient's education program or activity; or (c) did not occur against a person in the United States.
  2. The decision-maker(s) may dismiss the formal complaint or any allegations therein if (a) the complainant notifies the Title IX Coordinator(s) in writing that they would like to withdraw the formal complaint or any allegations therein; (b) the respondent is no longer enrolled or employed by the recipient; or (c) specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
  3. If the decision-maker(s) dismiss(es) the formal complaint under either standard, he or she must send written notice of the dismissal and the reason(s) simultaneously to the parties.
- D. The Parties may submit evidence to the investigator(s), including any expert testimony, within ten calendar (10) days of receiving notice of the formal complaint.
- E. Within twenty business (20) days of the filing of the formal complaint, the Board's investigator(s) will complete the initial review of the evidence. The investigator(s) will 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.
- F. No later than ten calendar (10) days after the receipt of the initial review of the evidence, each party has the right to submit a written response to the evidence, which the investigator(s) will review and consider prior to the completion of the investigative report.
- G. Within thirty-five business (35) days after notice of the formal complaint and including the time for each party to submit a written response to the initial review of evidence, the Board's investigator(s) will finalize and send to the parties and their advisors, if any, an investigative report that fairly summarizes the relevant evidence.
- H. The parties have three calendar (3) days following the receipt of the investigative report to submit to the Board's decision-maker(s) written, relevant questions that the party wants asked of any party or witness.

However:

1. Questions and evidence regarding the complainant's sexual predisposition or prior sexual behavior are not relevant unless such questions and evidence are offered to prove either:
    - a. that someone other than the respondent committed the conduct alleged by the complainant; or
    - b. that the conduct alleged by the complainant was consensual only (i) if the students are not under the age of 16, because consent cannot be given by an individual under the age of 16, and (ii) if the questions and evidence concerning specific incidents of the complainant's prior sexual behavior were with the respondent.
  2. If any question is deemed not relevant, the decision-maker(s) must explain to the party proposing the question the reasoning for excluding the question.
  3. If a party or witness refuses to answer a relevant question, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; however, the decision-maker(s) will not draw an inference about the determination of responsibility based solely on a party or witness's refusal to answer a relevant question.
- I. Answers to relevant questions will be provided to the parties within five business (5) days of submission. Parties will be permitted two calendar (2) days to submit limited follow-up questions. Those answers will be provided within five business (5) days of submission. No additional follow-up questions will be permitted without the Board's written consent.
- J. Not sooner than ten calendar (10) days following the parties' receipt of the investigative report and not later than ten calendar (10) days following the last response to any party's written question or follow-up question, the Board's decision-maker(s) will issue a written determination regarding responsibility simultaneously to both parties.
- K. The decision-maker(s) will ensure that the written determination regarding responsibility does the following:
1. identify the allegations alleged to be sexual harassment;
  2. describe the procedural steps taken from receipt of the formal complaint through determination, including describing the notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and the hearings held;
  3. make findings of fact supporting the determination;
  4. make conclusions regarding the how the Code of Conduct applies to the facts;
  5. make a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanction to be imposed on the respondent, and whether remedies will be provided to the complainant; and
  6. describe the appeal process.

#### VII. Appeals From Written Determinations Regarding Responsibility

- A. Either party may appeal from either (1) a written determination regarding responsibility or (2) the dismissal of a formal complaint or any allegations therein. The appellate decision-maker(s) will not be the same as the Title IX Coordinator(s), the investigator(s), or the decision-maker(s) in the matter being appealed. The appellate decision-maker(s) will be free from bias and conflicts of interest.
- B. Appeals should be submitted in writing to the appellate decision-maker(s) within ten calendar (10) days of the decision being appealed.

- C. There are limited reasons for an appeal to be considered. Appeals will be considered only on one or more of the following bases:
1. A procedure was not followed or a procedural irregularity occurred that affected the outcome;
  2. New evidence is now available that was that was not reasonably available at the time the determination regarding responsibility or the dismissal was made and that new evidence could affect the outcome of the matter; or
  3. the Title IX Coordinator(s), investigator(s), or decision-maker(s) had a conflict of interest or bias (a) generally for or against complainants or respondents or (b) for or against the individual complainant or respondent and this affected the outcome of the matter.
- D. Upon receipt of an appeal, the appellate decision-maker(s) will notify the other party in writing when the appeal is filed and will ensure that appellate procedures are implemented equally for both parties. The notice provided to the other party will include a copy of the appellant's written appeal request.
- E. Upon the receipt of an appeal, each party will have five calendar (5) days to submit a written statement in support of, or challenging, the outcome. Each party will have five calendar (5) days to submit a written response to any statement by the other party. No further submissions will be allowed or considered.
- F. No additional evidence that was not part of the record below will be submitted or considered on appeal unless it is new evidence that could affect the outcome of the matter and was not reasonably available at the time the determination regarding responsibility or dismissal was made.
- G. No later than ten business (10) days following the parties' submission of the last written statement or response, the appellate decision-maker(s) will issue a written decision describing the result of the appeal and the rationale for the result.
- H. The decision on appeal shall be final.

#### VIII. Rights During a Complaint

- A. Where a party has been invited to or is expected to participate in an investigative interview or other meeting, written notice of the date, time, location, participants, and purpose of the meeting will be issued to that party. No investigative interview or other meeting with that party will take place with less than twenty-four (24) hours of notice.
- B. During any meeting or proceeding with a particular party throughout the grievance process, that particular party is entitled to have present one (1) advisor of her/his choice. The advisor's presence is to advise that party (at a later time).
1. The advisor has no right to speak, question, advocate or otherwise participate an interview or meeting unless written consent is obtained from the Superintendent or her designee at least five business (5) days in advance of the meeting in question.
  2. Any interruption caused as result of the advisor shall not be considered a delay by the District of this grievance process, but may be grounds for a good cause time extension of the grievance process.

#### IX. Remedies Available

If a determination is made that the respondent is responsible for the allegations, the following remedies are available to the complainant: additional supportive measures and a range of restorative practices.

#### X. Possible Disciplinary Sanctions

- A. For students. If a determination is made that the respondent is responsible for the allegations, the District will impose a punishment aligned to the Code of Conduct.

B. Potential punishments may include but are not limited to any of the following offenses and consequences further defined in the Code of Conduct:

1. False Information or Giving False Information: Range of verbal warning to disciplinary hearing (range dependent on grade level and progressive discipline level).
2. Inappropriate Physical Contact Between Students: Range of verbal warning to short term out of school suspension for five (5) days (range dependent on grade level and progressive discipline level).
3. Profanity (including gestures, graphics, or materials): Range of verbal warning to short term out of school suspension for five (5) days (range dependent on grade level and progressive discipline level).
4. Inappropriate Activity of a Sexual Nature: Range of short term out of school suspension for three (3) days to disciplinary hearing (range dependent on grade level and progressive discipline level).
5. Sexual Misconduct: Range of short term out of school suspension for three (3) days to disciplinary hearing (range dependent on grade level and progressive discipline level).

C. The District reserves the right to identify other offenses and consequences beyond these listed in Section X(B) above and may do so in compliance with this grievance process.

D. As the Code of Conduct is reviewed regularly, if any differences exist in language between the offense and consequences listed in Section X(B) above and the Code of Conduct, then the Code of Conduct shall prevail.

E. For employees. If a determination is made that the respondent is responsible for the allegations, the matter shall be turned over to the Executive Director for Human Resources to impose punishment. The disciplinary action may range from a short term suspension to termination. If the employee is a contract employee, and the Board determines that suspension or termination of the contract is appropriate, the employee shall be entitled to the process afforded in O.C.G.A. § 20-2-940.

F. In addition to possible disciplinary sanctions outlined herein, the District may remove a respondent from the District's education program or activity on an emergency basis prior to any determination of responsibility.

1. In order to do so, the decision-maker(s) shall make an individualized safety and risk analysis.
2. If the decision-maker(s) conclude(s) that an immediate threat to the physical health or safety of any other student or other individual arising from the allegations of sexual harassment justifies removal, the decision-maker(s) may direct the emergency removal.
3. Upon such emergency removal, the decision-maker(s) will provide written notice to the respondent.
  - a. The respondent may challenge that decision by providing a written basis and evidence in support to the decision-maker(s) within five calendar (5) days.
  - b. The decision-maker(s) will then provide a written decision regarding the emergency removal. That decision can be appealed consistent with this grievance process.

## XI. Training

A. All Title IX Coordinator(s), Investigator(s), decision-maker(s), appellate decision-maker(s) and any person who facilitates informal resolution will receive training: on the decision of sexual harassment, the scope of the Board's education program or activity, how to conduct an investigation and grievance process, and how to serve impartially, including the avoidance of prejudging the facts at issue, conflicts of interest, and bias.

1. Investigator(s) will receive specific training on issues of relevance and how to create an investigative report that fairly summarizes relevant evidence.
2. These trainings will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints of sexual harassment.

B. No Title IX Coordinator(s), investigator(s), decision-maker(s), appellate decision-maker(s) nor any person who facilitates informal resolution will have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

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