

**BOARD AGENDA ITEM**

**July 28, 2020**

***SUBJECT:***

New Policy JIA Title IX Sexual Harassment, First Reading  
Revisions to Policy JI Student Rights and Responsibilities (Complaints and Grievances) and Administrative Rule to Policy JI Students Rights and Responsibilities (Complaints and Grievances), First Reading

***BACKGROUND INFORMATION:***

On May 6, 2020, the U.S. Department of Education's Office for Civil Rights (OCR) announced a notice of proposed rule making for new amendments for the regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The new Title IX include specific definitions districts need to know, specifically requires appointment of a Title IX Coordinator, and requires new and specific notices including the dissemination of policy information and publication of contact information for the Title IX Coordinator. Districts are required to create a compliant grievance process, including a determination for a standard of review and a range or list of possible disciplinary actions and remedies.

***ADMINISTRATIVE CONSIDERATION:***

The proposed policy reflects the required regulations for the Title IX revision, including the appointment of a Title IX Coordinator, new and specific notices for the dissemination of policy information and publication of contact information, and a compliant grievance process. This policy is intended for student-student sexual harassment allegations.

Revisions were made to Policy JI Student Rights and Responsibilities (Complaints and Grievances) and Administrative Rule to Policy JI Students Rights and Responsibilities (Complaints and Grievances) to ensure the new policy is considered when a sexual harassment allegation is made.

***RECOMMENDATION:***

Approve Policy JIA Title IX Sexual Harassment on first reading  
Approve Policy JI Student Rights and Responsibilities (Complaints and Grievances) on first reading  
Approve Administrative Rule to Policy JI Students Rights and Responsibilities (Complaints and Grievances) on first reading

***ATTACHMENTS:***

Policy JIA Title IX Sexual Harassment  
Policy JI Student Rights and Responsibilities (Complaints and Grievances)  
Administrative Rule JI Students Rights and Responsibilities (Complaints and Grievances)

***PREPARED BY:***

Salvatore Minolfo

## TITLE IX SEXUAL HARASSMENT

Code **JIA** Issued **08/20**

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The District, as required by Title IX of the Education amendments of 1972 and its corresponding regulations (“Title IX”), does not discriminate on the basis of sex in its education programs or activities. Title IX prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex even if those acts do not involve conduct of a sexual nature. The District prohibits discrimination and harassment on the basis of sex or gender in all of its programs and activities by its employees, students or third parties.

The District will respond promptly to actual knowledge of sexual harassment in an education program or activity of the District against a person in the United States in a manner that is not deliberately indifferent. The response will treat complainants and respondents equitably.

Any allegations of inappropriate conduct of a sexual nature that fall outside of this policy will be handled consistent with other applicable Board policies, including the Code of Conduct.

### **DEFINITIONS**

#### ***Sexual Harassment***

34 CFR § 106.30(a)

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

- An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual’s participation in unwelcome sexual conduct;
- 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 district’s education program or activity; or
- “sexual assault” as defined in 20 USC 1092(f)(6)(A)(v), “dating violence” as defined in 34 USC 12291(a)(10), “domestic violence” as defined in 34 USC 12291(a)(8), or “stalking” as defined in 34 USC 12291(a)(30).

(Note: use of email, internet or other technologies may constitute “sexual harassment” on a similar basis to use of in-person, postal mail, handwritten or other communications)

#### ***Education program or activity***

34 CFR § 106.44(a)

Includes any locations, events or circumstances over which the district exercised substantial control over both the alleged harasser (respondent) and the context in which the harassment occurred.

#### ***Consent***

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An active agreement to participate in sexual contact or penetration. An active agreement is words and/or conduct that communicates a person's willingness to participate in sexual contact or sexual penetration. Consent may not be given in some circumstances based upon incapacitation, force, coercion or age.

### ***Formal complaint***

34 CFR § 106.30(a)

A document filed by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment.

**The factors that a Title IX coordinator may consider when determining whether to sign a complaint include, but are not limited to:**

- Whether there have been other reports of sexual harassment or other relevant misconduct concerning the same Respondent
- Whether or not the incidents occurred while the Respondent was a District student or employee;
- Whether the Respondent threatened further sexual harassment or other misconduct against the Complainant or others;
- Whether the alleged sexual harassment was committed by multiple perpetrators;
- The nature and scope of the alleged sexual harassment including whether the sexual harassment was perpetrated with a weapon;
- The ages and roles of the Complainant and the Respondent;
- Whether the District can pursue the investigation without the participation of the Complainant (e.g., whether there are other available means to obtain relevant evidence of the alleged sexual harassment such as security cameras or physical evidence);
- Whether the report reveals a pattern of perpetration (e.g., perpetration involving illicit use of drugs or alcohol) at a given location or by a particular group.

### ***Complainant***

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

A parent or legal guardian who has the legal authority to act on behalf of his or her child may act as the complainant and file a complaint on behalf of his or her child. 34 CFR § 106.6(g).

### ***Respondent***

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

### ***Days***

Any reference to days means a day on which the District is open.

### ***Actual Knowledge***

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34 CFR § 106.30(a)

Actual knowledge of sexual harassment means notice of sexual harassment or allegations of sexual harassment to the District's Title IX coordinator or *any* District employee.

### ***Burden of Proof***

The District will use the preponderance of evidence standard to determine responsibility.

### **Role of Title IX Coordinator**

34 CFR § 106.8(a)

The District administration will designate a Title IX coordinator. The Board authorizes the Title IX coordinator to coordinate the District's required efforts under the law.

The Title IX coordinator's name or title, email address, office address and telephone number will be posted on the District's website and will be included in any handbook provided to employees, students and parents or legal guardians.

### **Notice requirement**

34 CFR § 106.8

In addition to providing notice of the Title IX coordinator's name and contact information, the administration will also provide notice of the District's nondiscrimination policy and grievance procedures, including how to file or report sexual harassment and how the District will respond to applicants for admission and employment, students, and parents or legal guardians.

### **Training**

34 CFR § 106.45(b)

The District administration will ensure that Title IX coordinators, investigators, decision makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of the District's education program or activity, how to conduct an investigation and grievance process, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The decision makers must also receive training on issues of relevance of questions and evidence. The investigators must also receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. The administration will make training materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process publicly available on the District's website.

### **Reporting Allegations**

34 CFR § 106.8(a)

Any person may report sex discrimination, including sexual harassment, regardless of whether the person is the alleged victim of the reported conduct, in person, by mail, by telephone, or by email.

The report can be made at any time, including during non-business hours, by using the telephone number or email address, or by mail to the office address, listed for the Title IX coordinator.

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### **Supportive Measures**

34 CFR § 106.30(a)

The Title IX Coordinator must promptly contact the complainant (alleged victim) to discuss the availability of supportive measures, 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 the process for filing a formal complaint.

Supportive measures are non-disciplinary, non-punitive, individualized services, offered as appropriate, as reasonably available, and without charge to a complainant or a respondent before or after the filing of a formal complaint, or where no formal complaint has been filed. Confidentiality of supportive measures must be maintained to the extent that maintaining confidentiality would not impair the ability of the District to provide the supportive measures. (Examples may include counseling, course modification, scheduling changes, mutual restrictions on contact between the parties, and increased monitoring or supervision).

The Title IX Coordinator's prompt response (to offer supportive measures) is required regardless of whether a formal complaint is filed.

Supportive measures offered should be documented.

### **Response to a Formal Complaint**

34 CFR § 106.45(b)(1)

The District's grievance process will:

- Treat parties equitably.
- Require an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.
- Require that any person designated as a Title IX coordinator, investigator, decision-maker, or any person designated to facilitate an informal process not have a conflict of interest against complainants or respondents generally or against the particular complainant and respondent. The District will ensure required training is provided to these individuals.
- Include a presumption that the respondent is not responsible for the alleged conduct until a determination has been made at the conclusion of the grievance process.
- Include reasonably prompt time frames for conclusion of the grievance process.
- Describe or list the possible disciplinary outcomes and remedies that may be implemented following a determination of responsibility. (See Student Code of Conduct Policy JICDA and Staff Code of Conduct Policy GBEB.)
- Include the procedures and permissible reasons for appeal by a respondent or a complainant.
- Describe the range of supportive measures available to complainants and respondents.
- Not require, allow or use evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.

### Written Notice

34 CFR § 106.45(b)(2)

Upon receipt of a formal complaint, the District must provide written notice to all known parties in sufficient time to give the respondent time to prepare a response before an initial interview. Written notice must include:

- Notice of grievance process, including any informal resolution process;
- Notice of the allegations, including sufficient detail (i.e., names of known parties, the conduct alleged to be sexual harassment, and the date and location of the alleged conduct, if known) to allow the respondent to prepare a response;
- Statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
- Notice of the parties' right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
- Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false information in the grievance process.

### Dismissal of Complaint

34 CFR § 106.45(b)(3)

The District administration will investigate the allegations in a formal complaint.

The complaint *must* be dismissed if the allegations:

- would not constitute sexual harassment as defined in § 106.30, even if proved;
- did not occur in the district's education program or activity; or
- did not occur against a person in the United States.

The complaint *may* be dismissed:

- if the complainant notifies the Title IX coordinator in writing at any time that he or she wishes to withdraw the complaint or any allegations in it;
- if the respondent's enrollment or employment ends, or;
- if specific circumstances prevent the District from gathering evidence sufficient to reach a determination.

The District will promptly send written notice of dismissal and reasons for dismissal simultaneously to parties. Such a dismissal does not preclude action under other provisions of the District's code of conduct. Refer to the Administrative Procedures for Sexual Harassment JI-R to consider provisions of the District's code of conduct.

### Investigation Process

34 CFR § 106.45(b)(5)

When investigating a complaint, the investigator will:

- Ensure that the burden of proof and of gathering evidence rests on the District rather than the parties, except that certain treatment records cannot be obtained without voluntary, written consent from the party or parent;

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- Provide an equal opportunity for the parties to present witnesses and evidence;
- Not restrict either party's ability to discuss the allegations or gather and present relevant evidence;
- Provide the parties with the same opportunities to have others present during interviews or other related proceedings, including an advisor who may, but is not required to be, an attorney (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);
- Provide to a party who is invited or expected to attend, written notice of the date, time, participants, purpose and location of any investigative interview or other meeting with enough time to allow the party to prepare to participate;
- Provide both parties and advisors, if any, an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint, including evidence on which the District does not intend to rely and any inculpatory or exculpatory evidence from any source; such evidence must be provided prior to the completion of the final investigation and in time to give the parties at least 10 days to prepare a written response, which the investigator must consider prior to completing the investigation report; and
- Prepare a written investigation report that fairly summarizes the relevant evidence and provide the report to the parties and their advisors, if any, at least 10 days before the decision maker makes a determination of responsibility.

**Determination of responsibility by decision maker**

34 CFR § 106.45(b)(7)

After the investigator has sent the investigative report to the parties, and before a determination has been made regarding responsibility, the decision maker will:

- Provide each party 10 days to respond to the investigative report and the opportunity to submit written, relevant questions that the party wants asked of another party or witness;
- Provide each party with the answers to written questions; and
- Provide for limited follow-up questions from each party.

The decision maker, who cannot be the investigator or the Title IX coordinator, will apply the District's preponderance of the evidence standard and issue a written determination of responsibility that:

- Identifies the allegations that potentially constitute sexual harassment;
- Describes the District's procedural steps taken from the receipt of the complaint through the determination;
- Includes findings of fact supporting the determination;
- Includes conclusions regarding the application of the District's code of conduct to the facts;
- Includes a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions, and whether remedies to restore or preserve equal access to the District's education program or activity will be provided to the complainant; and
- Includes procedures and permissible bases for the complainant and respondent to appeal. The written determination must be provided to the parties simultaneously.

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- Explains to the other party proposing the questions any decision to exclude a question as not relevant.

### **Appeals Process**

34 CFR § 106.45(b)(8)

Within 10 days of receipt of the determination, either party may appeal a determination of responsibility, or the District's dismissal of a formal complaint or any allegations therein, for the following reasons:

- A procedural irregularity that affected the outcome;
- New evidence that was not reasonably available at the time of determination and could affect the outcome; or
- Conflict of interest on the part of the Title IX coordinator, investigator, or decision maker that affected the outcome.

For all appeals, the District will provide written notice to both parties of the appeal and provide both parties an equal opportunity to submit a written statement in support of, or challenging, the determination. The parties will have five days to provide their written response.

The appeal must result in a written decision that must be provided to both parties simultaneously.

The decision maker for the appeal cannot be the same person as the decision maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX coordinator; cannot have a conflict of interest; and must receive training (outlined in 34 CFR § 106.45(b)(1)(iii))

### **Informal Resolution**

34 CFR § 106.45(b)(9)

The District cannot offer to facilitate an informal resolution process unless a formal complaint of sexual harassment is filed.

At any point during the formal complaint process, the District may offer to facilitate an informal process that does not require a full investigation, provided both parties are given the required notice of rights, and they consent. This process cannot be used in the context of a complaint that an employee harassed a student. Additionally, at any point prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process.

### **Emergency removal/administrative leave**

34 CFR § 106.44

In cases in which an employee is a respondent, the District may place that employee on administrative leave during the pendency of an investigation and grievance process.

In cases in which a student is a respondent, the District may remove, on an emergency basis, the respondent from the District's educational program or activity provided the District: (i) undertakes an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of

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sexual harassment justifies removal and (ii) provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision does not modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

### **Recordkeeping**

34 CFR § 106.45(b)(10)

The District will maintain records related to this policy for seven years. Specifically, the District will maintain records pertaining to: (i) each investigation and determination; (ii) any disciplinary sanctions imposed on respondent; (iii) any remedies provided to the complainant; (iv) any appeal and the result thereof; (v) any informal resolution and result; (vi) any materials used to train Title IX coordinators, investigators, decision makers, and any person who facilitates an informal resolution process.

The District shall also create and maintain records related to any action or supportive measures taken in response to a report or complaint of sexual harassment. The records shall document the basis for the District's 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 educational programs or activities. If no supportive measures are provided, the District shall document why such a response was not clearly unreasonable.

### **Retaliation**

34 CFR § 106.71

Neither the District nor any other person may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege under Title IX or because the individual made a report, a complaint, testified, assisted, participated in, or refused to participate in any manner in an investigation or proceeding under this policy.

The District shall keep confidential the identity of any individual who made a report or complaint of sexual discrimination or sexual harassment, any complainant, any individual reported as a perpetrator, any respondent and any witness except as permitted under FERPA or as required to carry out the purposes of this policy and its procedures thereunder.

Charging someone with making a materially false statement in bad faith, does not amount to retaliation, provided that a determination regarding responsibility alone is not sufficient to conclude that any party made a materially false statement in bad faith.

### **Timeline for process**

The grievance process will be completed within one hundred and twenty (120) days. Temporary delays and/or extensions of the time frames within this Policy may occur for good cause. Written notice will be provided to the parties of the delay and/or extension of the time frames with explanation of the reasons for such action. Examples of good cause for delay/extensions include, but are not limited to, 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.

Adopted 08/11/20

Legal references:

A. Federal statutes:

1. Title IX of the Education Amendments of 1972, 20 USC § 1681, *et seq.* - Prohibits discrimination on the basis of sex.
2. 34 CFR Section 106 *et seq.*
3. 42 U.S.C. 2000e – Prohibits discrimination in employment on the basis of race, color, national origin, religion, or sex.
4. Title VII of the Civil Rights Act of 1964, as amended.

# STUDENT RIGHTS AND RESPONSIBILITIES (COMPLAINTS AND GRIEVANCES)

Code **JI** Issued **08/20**

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Purpose: To establish the basic structure for student rights and responsibilities.

The board has the responsibility to afford students the legal rights guaranteed to them under federal and state constitutions, statutes, and implementing regulations. The board also believes that students must accept the responsibilities connected with these rights and respect the rights enjoyed by others.

The board is committed to equal opportunity for all individuals in education. District programs and activities will be free from discrimination based on race, religious creed, color, national origin, ancestry, disability, marital status, sex, or any other unlawful consideration. The board promotes programs dedicated to the elimination of discriminatory practices in district activities.

District programs and facilities, viewed in their entirety, will be readily accessible to individuals with disabilities. The superintendent or his/her designee will ensure that interested persons, including those with impaired vision and hearing, can obtain information about the programs, facilities, and activities available to them.

Other essential rights and responsibilities include the following:

- The right to attend public schools; the responsibility to attend school as required by law and to observe school rules and regulations essential for permitting others to learn at school, as set forth in the code of student conduct, student handbooks, and other applicable announced rules.
- The right to due process of the law with respect to suspension, expulsion, unreasonable searches and seizures, or administrative decisions that the student believes has injured his/her rights, as set forth in district policies and procedures.
- The right to inquiry and expression; the responsibility to observe reasonable rules regarding these rights.
- The right to privacy; the responsibility to be familiar with limitations to this right where needs for security, student safety, and discipline enforcement so require.

Students of the district will be made aware of the legal authority of the board to make or delegate authority to its staff to make rules and regulations regarding the orderly operation of the schools.

## **Sexual Harassment**

### Statement of policy and rationale

Sexual harassment is a form of sex discrimination prohibited by federal and state laws. Consistent with these laws, it is the policy of the Aiken County Public Schools that sexual harassment of students is prohibited.

### Definition

Sexual harassment of students in the Aiken County Public Schools is defined as unwelcome sexual advances, requests for sexual favors, verbal or otherwise expressive behaviors, or physical conduct commonly understood to be of a sexual nature, by a person of either sex against a person of the opposite or same sex, when any the following occurs:

- Submission to such conduct is made either explicitly or implicitly a term or condition of a student's education.
- Submission to or rejection of such conduct is used as a basis for educational actions, decisions, or assessments that favor or adversely affect a student's welfare as a student.
- Such conduct unreasonably and substantially interferes with an individual's welfare and professional performance and creates an intimidating, hostile, offensive, and demeaning work environment.
- Threats or insinuations that the student's educational opportunities, grades, assignments, honors, services, or other educational conditions or programming may be adversely affected by not submitting to sexual advances.

### Responsibility

Each administrator, supervisor, staff member, and student will strive to provide an educational environment free from sexual harassment.

### Policy of non-reprisal

No student, employee, or member of the public may be subject to restraint, interference, coercion, or reprisal for seeking information about sexual harassment, filing a sexual harassment complaint, or serving as a witness.

### Filing a complaint

A complaint of sexual harassment should be made to the Title IX Coordinator to determine whether the complaint meets the conditions of sexual harassment in the definition of sexual harassment in Title IX of the Educational Act of 1972 (Title IX) found in Policy JIA Title IX. If the complaint does not meet the conditions in Policy JIA Title IX, the complaint should be reported by the Title IX Coordinator to an administrator to apply Students Rights and Responsibilities JI and the Administrative Procedures for Sexual Harassment JI-R.

Any student who feels that he/she has been directly the victim of sexual harassment by a district employee or student may file a complaint. A complainant should begin the complaint procedure by initiating the informal consultation, after which a formal complaint for investigation may be filed according to the Administrative Procedures for Sexual Harassment JI-R. The investigation will be conducted in a confidential manner and concluded within a reasonable period of time. Nothing in district policy requires the complainant to present the complaint to the person who is the subject of the complaint. A formal complaint must be filed within one calendar year of the alleged occurrence. However, no one should be precluded from filing an informal complaint at any time; or from pursuing a claim of sexual harassment with the Office of Civil Rights, U.S. Department of Education  
<http://www2.ed.gov/about/offices/list/ocr/index.html?src=oc>.

Disciplinary action

Violation of this policy, including willful false accusation of sexual harassment, will be subject to disciplinary action that may include, but is not limited to, oral or written warnings, demotion, transfer, dismissal, suspension, or expulsion.

Adopted 6/10/75; Revised 8/17/93, 3/9/99, 4/23/02, 4/18/17, 08/11/20

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Legal references:

Federal Law:

Title VI of the Civil Rights Act of 1964 - Prohibits discrimination on the basis of race, color, national origin, religion or sex.

Section 504(b) of Rehabilitation Act of 1973 - Prohibits discrimination against "otherwise qualified" handicapped persons by federal grantees.

Title IX of the Education Amendments of 1972 - Prohibits sex discrimination by federal education grantees. See regulations set forth in [34 CFR Section 86.6](#) (a,b).

Title IV of the Civil Rights Act of 1964 - Public school desegregation.

Americans with Disabilities Act - Prohibits discrimination in employment and access to programs and facilities on the basis of disability.

# STUDENT RIGHTS AND RESPONSIBILITIES (COMPLAINTS AND GRIEVANCES)

Code **AR JI-R** Issued **08/20**

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## Resolution of Student Discrimination Complaints

### Discrimination

Students who believe that they have been discriminated against on the basis of race, religious creed, color, national origin, ancestry, or sex (including Title IX complaints) have the right to appeal to their principals. If the student is not satisfied with the decision of the principal, he/she may appeal to the appropriate executive director. Thereafter, an appeal may come to the chief officer of human resources and administration (serving as the district's civil rights coordinator) or chief officer of operations and student services. Appeals from this level will be to the district superintendent and then to the board of education.

### Section 504 complaints

Students who believe that they have been discriminated against on the basis of a disability or handicapping condition have the right to appeal to their principals. If the student is not satisfied with the decision of the principal, he/she may appeal to the appropriate executive director. Thereafter, an appeal may come to the district's Section 504 coordinator. Appeals from this level will be to the district superintendent and then to the board of education.

## Procedures

Generally, complaints of alleged discrimination as set forth in board policy will be limited to alleged occurrences or omissions happening within 60 days prior to the initiation of such complaint. However, upon request by the complainant, the administration can waive such limitation if the complainant can show that the information he/she seeks to include in the record is reasonably related to the subject of the complaint.

Any complaint intended to be filed pursuant to this procedure (formal complaint) will be in writing to the principal.

The principal will, within five working days, exclusive of the day of receiving the complaint, conduct an appropriate investigation and/or hold a conference, with the complainant and other appropriate involved parties.

Within five working days after the investigation (or conference), the principal will notify the complainant in writing of his/her findings and action taken (where necessary).

A complainant may appeal in writing within 10 days of the date of the principal's written decision to the next level (by personal delivery, fax delivery, email delivery, or postmarked mail). Failing to appeal within such time constitutes waiver of further appeal rights.

Procedures for appeals made on a timely basis will be subject to the same time guidelines as proceedings at the level of the school principal. For appeals beyond the level of the civil rights coordinator or Section 504 coordinator, the complainant has no automatic right to a conference and such appeal will be based on written materials only (unless the superintendent and/or board grants a discretionary conference).

The principal may initially assign complaints involving Section 504 concerns to the designated building-level Section 504 coordinator, but this will not alter the time constraints for handling the complaint.

## **Sexual Harassment**

The Aiken County Board of Education recognizes that in order to maintain an environment in which the dignity and worth of all students of the district are respected, sexual harassment must be prohibited. The board has adopted policy to provide direction to this process. The following procedures have been developed and approved by the board of education to implement the policy. *Definition*

Sexual harassment is defined in policy JI and JIA.

### Examples of prohibited behavior

Prohibited acts of sexual harassment may take a variety of forms ranging from subtle pressure for sexual activity to physical assault. Examples of the kinds of conduct included in the definition of sexual harassment include, but are not limited to, the following:

- Threats or intimidation of sexual relations or sexual contact which is not freely or mutually agreeable to both parties. Continual or repeated verbal abuses including graphic commentaries, innuendoes, comments, jokes, or propositions of a sexual nature; unwelcome touching or interference with movement; the visual display of derogatory cartoons, drawings or posters; or suggestive or insulting sounds, leering, whistling, or obscene gestures.
- Threats or insinuations that the student's educational opportunities, grades, assignments, honors, services, or other educational conditions or programming may be adversely affected by not submitting to sexual advances.

### Sexual harassment complaints

Students who believe that they are the victims of sexual harassment will follow the procedures set forth in this administrative rule.

### Complaint procedures

An aggrieved student is encouraged to inform the person engaging in sexually harassing conduct that such conduct is offensive and must stop. If the aggrieved student is not comfortable with direct communication, or if direct communication is unsuccessful, the aggrieved student should discuss the matter with a parent, teacher, counselor, or any other adult with whom he/she feels comfortable, and/or should initiate the complaint procedures described below.

A complaint of sexual harassment should be made to the Title IX Coordinator to determine whether the complaint meets the conditions of sexual harassment in the definition of sexual harassment in Title IX of the Educational Act of 1972 (Title IX) found in Policy JIA Title IX. If the complaint does not meet the conditions in Policy JIA Title IX, the complaint should be

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reported by the Title IX Coordinator to an administrator to apply Students Rights and Responsibilities JI and the Administrative Procedures for Sexual Harassment JI-R.

### Informal consultation

The purpose of informal consultation is to clarify what constitutes sexual harassment, to provide guidance and information on administrative procedures, and to resolve inadvertent cases of harassment. A request for informal consultation should be directed to either the student's principal, the assistant principal, guidance counselor, or appropriate executive director. The individual who receives the request for informal consultation must inform the complainant about the options available under the policy. Anyone else receiving a complaint should encourage the complainant(s) to request an informal consultation or should notify one of the designated individuals directly.

Contact with any of the designated individuals may conclude in one or more of the following options:

- Complainant decides that no sexual harassment has occurred. In this case, no further action will be taken, and the consultation will remain entirely confidential.
- Complainant decides that sexual harassment has occurred and one of the following happens:
  - Where the accused is a student, agrees to have the accused's principal investigate the matter and take disciplinary action, as warranted, pursuant to the student discipline code.
  - Where the accused is an employee, requests that an informal resolution be pursued.In either case, the complainant must be advised that, depending upon the circumstances of the complaint, it may be impossible to protect the complainant's identity from the accused.
- Complainant decides that sexual harassment has occurred and chooses to file a formal complaint for investigation. Documentation that the informal consultation has taken place should be kept and should include a written statement from the complainant and/or notes taken by the consultant. If such notes are kept, the complainant should be so advised and the notes should be reviewed by the complainant for accuracy. If the name of an accused is revealed during the informal consultation, the accused should be advised of the allegations.

### Formal complaint

#### Filing a complaint

After completing the informal consultation step, a complainant and/or the complainant's parent who wishes to file a formal complaint for investigation and possible action should do so with the individual who conducted the informal consultation. The consultant will complete a sexual harassment complaint form and refer the matter to the chief officer of human resources and administration or designee who will conduct an investigation. Once a formal complaint has been filed, it must proceed through all the steps in this administrative rule.

#### Investigation

The purpose of the investigation is to establish whether there is a reasonable basis for believing that the alleged violation of this policy has occurred. In conducting the investigation, the chief officer of human resources and administration or designee will interview the complainant and the accused, and will normally interview other persons believed to have pertinent factual



knowledge. While it may be necessary at times to reveal the name of the accused or the complainants, confidentiality will be maintained by all persons involved. Failure to maintain the confidentiality of the investigation could result in disciplinary action. The investigation will afford the accused a full opportunity to respond to the allegations. Within a reasonable period of time (normally 40 calendar days from the time the complaint was filed), the investigator will provide the complainant's parent and the accused, or the accused's parent if the accused is a student, with written notification that the investigation has been completed, that a written report has been sent to the accused's principal or immediate supervisor, and that they will be notified as to what further action, if any, will be taken.

#### Process of formal action

After receiving a written report of the findings of the investigation from the chief officer of human resources and administration or designee, the principal will initiate a consultation with the chief officer of human resources and administration. Based upon the report and the consultation, the principal will decide upon one of three possible courses of action:

- judgment that the allegations are not warranted
- informal resolution as agreed upon by the parties
- corrective and disciplinary action as described below

#### Protection of complainant, witnesses, and others

At the time that the formal complaint is filed, the complainant and/or the complainant's parent will be informed fully by the individual who conducted the informal consultation and/or the chief officer of human resources and administration, of steps which the investigation will follow, including the projected timetable for completion of the process.

All reasonable action will be taken to assure that the complainant and those testifying on behalf of the complainant, or supporting the complainant in other ways, will suffer no retaliation as a result of their activities in regard to the process. Steps to avoid retaliation may include the following:

- transfers of one or more of the parties to another class or setting arrangements that
- educational evaluations or decisions concerning the complainant and the student witnesses, or employment evaluations of employee witnesses, be made by an appropriate individual other than the accused

In cases where the accused is an employee and if in the judgment of the superintendent it is in the best interest of the district, the accused may be relieved of his/her duties during the investigation.

#### Protection of the accused

At the time the investigation commences, the accused, and the accused's parents if the accused is a student, will be informed in writing of the allegations, the identity of the complainant, and the facts surrounding the allegations.

In the event the allegations are not substantiated, all reasonable steps will be taken to so advise those involved in the investigation who had knowledge of the allegations and to generally restore the reputation of the accused if damaged by the proceeding.

## **The School District of Aiken County**

A complainant found to have been intentionally dishonest in making the allegations or to have made them maliciously is subject to disciplinary action, pursuant to the student discipline code.

Disciplinary action

Any employee or student who is found to have engaged in sexual harassment of a student, and the student's parent if the accused is a student, will be notified of the outcome of the investigation and will be subject to appropriate disciplinary action, which may include, but is not limited to, oral or written warnings, demotion, transfer, dismissal, suspension, or expulsion.

Remedial action

The complainant's parent will be notified of the outcome of the investigation. If applicable, the complainant's parent will also be notified of the specific remedy available and the general category of disciplinary action taken against the accused. Every reasonable effort will be made to insure that the complainant is free from any further harassment. The individual who conducted the informal consultation will be responsible for counseling the complainant to insure that he/she is comfortable with the resolution and for following up with the complainant at least once within three months of the resolution to insure that the complainant has not been subjected to any further harassment.

**Education of the School District Community**

Following the adoption of policy, the policy will be referenced in the student handbook and a copy of the policy and this administrative rule will be available in each school media center and the district office. Principals and supervisors will also conduct a review of the policy and this administrative rule for all students and staff members to provide orientation on the nature of sexual harassment, how to identify it and the appropriate actions to follow should they encounter sexual harassment. With regard to students, such review and orientation will take into consideration and be appropriate to the age of the students.

Principals and supervisors will provide an appropriate orientation for new students and employees near the beginning of their association with the district.

Near the beginning of each subsequent school year, principals and supervisors will provide for their students and staff a review of the policy and administrative rule.

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