

## CHAPTER 2.00 - SCHOOL BOARD GOVERNANCE AND ORGANIZATION

### Grievance Process for Complaints of Sexual Harassment

2.161

1. Introduction. Rule 2.16 codifies the District's policy against Sexual Harassment, discrimination on the basis of sex and other forms of unlawful discrimination. This rule establishes the grievance process to be followed in addressing formal Complaints of Sexual Harassment.
2. Definitions. For purpose of this rule, the following definitions apply:
  - a. "Sexual Harassment." Sexual Harassment includes, but is not limited to, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature, including instances of:
    - i. An employee of the District conditions the provision of a District aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
    - ii. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a District education Program or Activity; or
    - iii. "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).
  - b. Conduct which may constitute Sexual Harassment includes, but it not limited to:
    - i. Graphic verbal comments about an individual's body or appearance;
    - v. Sexual jokes, notes, stories, drawings, pictures or gestures;
    - vi. Sexual slurs, leering, threats, abusive words, derogatory comments or sexually degrading descriptions;
    - vii. Unwelcome sexual flirtations or propositions for sexual activity or unwelcome demands for sexual favors, including but not limited to repeated unwelcome requests for dates;
    - viii. Spreading sexual rumors;
    - ix. Touching an individual's body or clothes (including one's own) in a sexual way, including, but not limited to, grabbing, brushing against, patting, pinching, bumping, rubbing, kissing, and fondling;

## CHAPTER 2.00 - SCHOOL BOARD GOVERNANCE AND ORGANIZATION

- x. Cornering or blocking normal movements; and
  - xi. Displaying sexually suggestive drawings, pictures, written materials, and objects in the educational environment.
- c. “Complainant” means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment prohibited by Title IX.
- d. “Formal Complaint” means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment prohibited by Title IX against a Respondent and requesting that the allegation be investigated. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. When the Title IX coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.
- e. “Program” or “Activity” includes locations, events or circumstances over which the School Board exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs.
- f. “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment prohibited by Title IX.
- g. “Supportive Measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the School Board’s education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or deter Sexual Harassment. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security or monitoring of parts of campus, and other similar measures. Any Supportive Measures provided to the Complainant or Respondent are maintained as confidential, to the extent that maintaining such confidentiality does not impair the ability to provide Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.
3. Title IX Coordinator. The District’s Title IX Coordinator is Cynthia Preston, 40 Orange Street, St. Augustine, Florida 32084, [cynthia.preston@stjohns.k12.fl.us](mailto:cynthia.preston@stjohns.k12.fl.us).
4. Title IX Grievance Process. Paragraphs 5 - 17 of this rule delineate the process for reporting, investigating and resolving Formal Complaints of Sexual Harassment:

## CHAPTER 2.00 - SCHOOL BOARD GOVERNANCE AND ORGANIZATION

5. Reporting Sexual Harassment. Any person may report Sexual Harassment (whether or not the person reporting is the person alleged to be the victim), in person, by mail, by telephone, or by electronic 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.
6. Investigation Mandatory. A Formal Complaint of Sexual Harassment must be investigated in accordance with the grievance process under this rule.
7. Initial Contact; Supportive Measures. Upon receiving a report of Sexual Harassment, the Title IX Coordinator should promptly contact the Complainant to discuss the need for and availability of Supportive Measures with or without the filing of a Formal Complaint. The Title IX Coordinator should consider the Complainant's wishes with respect to Supportive Measures, and when a Formal Complaint has not been filed, explain the process for filing one.
8. Emergency Removal. While the grievance process is pending, a Respondent may be removed from a school's education Program or Activity on an emergency basis, provided that an individualized safety and risk assessment determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal, and that the Respondent is provided with notice and an opportunity to challenge the decision immediately following the removal.
9. Administrative Leave. Where circumstances warrant, a non-student employee Respondent may be placed on administrative leave during the pendency of the grievance process.
10. Basic Requirements of the Grievance Process. The District's Sexual Harassment grievance process meets the basic requirements prescribed by 34 CFR §106.45.
  - a. The process treats Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent, and by following a grievance process that complies with §106.45 before the imposition of any disciplinary sanctions or other actions against a Respondent other than Supportive Measures as defined in §106.30. Remedies are designed to restore or preserve equal access to the District's education Program or Activity. Such remedies may include the same individualized services described in §106.30 as "Supportive Measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.
  - b. All relevant evidence is to be evaluated objectively, including both inculpatory and exculpatory evidence. Credibility determinations are not based on a person's status as a Complainant, Respondent, or witness.
  - c. Any Title IX Coordinator, Investigator, Decision-Maker, or any person who

## CHAPTER 2.00 - SCHOOL BOARD GOVERNANCE AND ORGANIZATION

facilitates an informal resolution process may not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

- d. The Title IX Coordinator, Investigators, Decision-Makers, and any person who facilitates an informal resolution process must receive training on the definition of Sexual Harassment prohibited by Title IX, the scope of the District's education Program, how to conduct an investigation and grievance process including appeals, and informal resolution processes, and how to serve impartially, including by avoiding pre-judgment of the facts at issue, conflicts of interest, and bias. Investigators and Decision-Makers receive training as to relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.
  - e. The Respondent is presumed not to be responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
  - f. Reasonably prompt time frames are provided for the steps in the grievance process and its conclusion.
  - g. A finding of responsibility may result in disciplinary action up to and including expulsion for students or dismissal of employees.
  - h. The standard of evidence used to determine responsibility is preponderance of the evidence.
  - i. The process does not allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege.
11. Notice of Allegations. Within two (2) days after receipt of a Formal Complaint, the Title IX Coordinator shall give the following written notice to the parties who are known:
- a. Notice of the grievance process, including any informal resolution process, and
  - b. Notice of the allegations potentially constituting Sexual Harassment prohibited by Title IX, including:
    - i. The identities of parties involved;
    - ii. The conduct allegedly constituting Sexual Harassment;
    - iii. The date and location of the alleged incident;

## CHAPTER 2.00 - SCHOOL BOARD GOVERNANCE AND ORGANIZATION

- iv. 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;
  - v. Notice the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence;
  - vi. Notice that the School Board's Rules and Student Code of Conduct prohibit knowingly making false statements or knowingly submitting false information during the grievance process; and
  - vii. Notice that if, in the course of an investigation, the Investigator decides to investigate allegations about the Complainant or Respondent that are not included in the notice previously provided, notice of the additional allegations will be provided to the parties whose identities are known.
- 12. Investigation of Formal Complaint. Investigation of a Formal Complaint shall proceed as follows:
  - a. Promptly upon receipt of a Formal Complaint, the District EEO Officer shall appoint an Investigator to conduct an investigation of the allegations of Sexual Harassment. The Investigator shall interview the Complainant and the Respondent; interview any witnesses identified by the Complainant, Respondent, or by other sources; take statements from all witnesses; and review any relevant documents or other evidence. Upon completing a review of all relevant evidence, the Investigator shall prepare an investigative report that fairly summarizes the relevant evidence in accordance with the procedure and within the time specified in paragraph 12.h.
  - b. During the grievance process, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the School Board and not on the parties.
  - c. A party's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party shall not be accessed, considered, disclosed or otherwise used in the investigation without the voluntary, written consent of the party's parent, or the party if the party is an eligible student.
  - d. During the investigation, the parties have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

## CHAPTER 2.00 - SCHOOL BOARD GOVERNANCE AND ORGANIZATION

- e. The ability of the parties to discuss the allegations under investigation or to gather and present relevant evidence should not be restricted.
  - f. During the investigation, the parties have the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. The choice or presence of advisor for either the Complainant or Respondent is not limited in any meeting or grievance proceeding.
  - g. Any party whose participation is invited or expected shall be provided written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings with that party, with sufficient time for the party to prepare to participate.
  - h. The Investigator shall provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence which will not be relied upon in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
  - i. Prior to the completion of the investigative report, and no more than thirty (30) days after appointment, the Investigator must 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, and the parties must have at least 10 days to submit a written response, which the Investigator will consider prior to completion of the investigative report.
  - j. The Investigator shall prepare an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the time a determination regarding responsibility is made, send to the Title IX Coordinator, each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.
13. Determination Regarding Responsibility. The Title IX Coordinator shall appoint a Decision-Maker, who cannot be the same person as the Title IX Coordinator or the Investigator, to issue a written determination regarding responsibility, after taking the following steps:
- a. After the Investigator has sent the investigative report to the parties and before reaching a determination regarding responsibility, the Decision-Maker must afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the Complainant's sexual

## CHAPTER 2.00 - SCHOOL BOARD GOVERNANCE AND ORGANIZATION

predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the question any decision to exclude a question as not relevant.

- b. Within sixty (60) days after the filing of the Formal Complaint, the Decision-Maker shall issue a written determination regarding responsibility. The Decision-Maker's written determination must include:
    - i. A summary of the allegations potentially constituting Sexual Harassment;
    - ii. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence; findings of fact supporting the determination;
    - iii. Conclusions regarding the application of the relevant law, including the Student Code of Conduct;
    - iv. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the School Board imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the School Board's education Program or Activity will be provided to the Complainant; and the procedures and permissible bases for the Complainant and Respondent to appeal.
  - c. The Decision-Maker must provide the written determination regarding responsibility to the parties simultaneously.
  - d. The determination regarding responsibility becomes final either on the date that the parties are provided with the written determination of the result of the appeal, or, if an appeal is not filed, the date on which an appeal would no longer be considered timely.
  - e. The Title IX Coordinator is responsible for effective implementation of any remedies.
12. Appeals. The parties shall have the right to appeal, as follows:
- a. Either party may appeal from a determination regarding responsibility or from a dismissal of a Formal Complaint or any allegations therein, for the

## CHAPTER 2.00 - SCHOOL BOARD GOVERNANCE AND ORGANIZATION

following reasons:

- i. Procedural irregularity that affected the outcome of the matter;
    - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
    - iii. The Title IX Coordinator, Investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
  - b. Notice of appeal must be given in writing to the Title IX Coordinator.
  - c. As to all appeals, the Title IX Coordinator shall:
    - i. Notify the other party in writing when an appeal is filed and implements appeal procedures equally for both parties;
    - ii. Ensure that the Decision-Maker for the appeal is not the same person as the Decision-Maker that reached the determination regarding responsibility or dismissal, the Investigator, or the Title IX Coordinator; and ensures that the Decision-Maker for the appeal complies with the standards set forth in Title IX and this policy.
  - d. The appeal Decision-Maker shall:
    - i. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
    - ii. Review the evidence gathered by the Investigator, the Investigator's report, and the Decision-Maker's written decision; and
    - iii. Issue a written decision describing the result of the appeal and the rationale for the result; and provides the written decision simultaneously to both parties and the Title IX Coordinator.
14. Timelines. The following timelines apply:
- a. The investigative report will be provided to the parties within thirty-five (35) days from the date the Formal Complaint is filed.
  - b. A decision regarding responsibility will be issued within sixty (60) calendar days from the date of the filing of the Formal Complaint.
  - c. Either party may appeal within five (5) working days from the date the written determination regarding responsibility is given to the parties.



## CHAPTER 2.00 - SCHOOL BOARD GOVERNANCE AND ORGANIZATION

- d. Any appeal will be resolved with fifteen (15) calendar days from the filing of the appeal.
  - e. If the parties agree to an informal resolution process, these deadlines are tolled from the time one party requests an informal resolution process until either the time the other party responds, if that party does not agree to the informal resolution process, or until either party withdraws from the informal resolution process.
  - f. Temporary delays of the grievance process or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action are permitted. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; disciplinary processes required by law or School Board policy; or the need for language assistance or accommodation of disabilities.
15. Dismissal of Formal Complaints. A Formal Complaint is subject to dismissal when:
- a. Conduct alleged in the complaint would not constitute Sexual Harassment even if proved did not occur in the School's education Program or Activity; or did not occur against a person in the United States. However, such a dismissal does not preclude action under another provision of the School Board's Code of Conduct or applicable law.
  - b. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; the Respondent is no longer enrolled or employed by the School Board; or specific circumstances prevent the School Board from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
16. Informal Resolution Process. The grievance process shall be subject to informal resolution under the following circumstances:
- a. At any time during the formal complaint process and prior to reaching a determination regarding responsibility, the parties may participate in an informal resolution process, such as mediation, that does not involve a full investigation and determination of responsibility. When one party requests an informal resolution process, the other party must respond to the request within 3 days. The informal resolution process must be completed within 10 days of the agreement to participate in the process.
  - b. The informal resolution process may be facilitated by a trained educational professional, consultant, or other individual selected by the Title IX Coordinator under the following conditions:
    - i. The parties are provided a written notice disclosing the allegations,

## CHAPTER 2.00 - SCHOOL BOARD GOVERNANCE AND ORGANIZATION

the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; provided, however that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process, resume the grievance process with respect to the formal complaint, and be informed of any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

- ii. The parties, voluntarily and in writing, consent to the informal resolution process; and
  - iii. The informal resolution process cannot be used to resolve allegations that an employee sexually harassed a student.
- c. If the matter is resolved to the satisfaction of the parties, the facilitator shall document the nature of the complaint and the resolution, have both parties sign the document and receive a copy, and forward it to the title IX Coordinator. If the matter is not resolved, the formal complaint process is resumed.
- d. Parties cannot be required to participate in an informal resolution process.
- e. An informal resolution process is not offered unless a formal complaint is filed.
17. Recordkeeping. Records of any grievance proceeding under this rule must be maintained for seven (7) years.
18. Guidelines and Procedures. The Superintendent is authorized to adopt guidelines and procedures to implement, interpret and augment this rule.

### **STATUTORY AUTHORITY:**

**1001.41; 1001.42; 1012.23, F.S.**

### **LAWS IMPLEMENTED:**

**1000.05, F.S.  
20 USC 1681  
34 CFR PART 106**

### **STATE BOARD OF EDUCATION RULE:**

**CHAPTER 6A-19, F.A.C.**

### **HISTORY:**

**ADOPTED: \_\_/\_\_/25**