

## **GRIEVANCE PROCESS FOR SEXUAL HARASSMENT CLAIMS**

### **I. INTRODUCTION AND STATEMENT OF POLICY**

This process accompanies Policy No. 408, and describes the procedure that the Rochester Beacon Academy hereinafter “School District” will follow when a formal complaint of sexual harassment has been filed. Questions regarding this process may be addressed to Jamie Schlichting, the School District’s Title IX Coordinator. Jamie Schlichting may be contacted at:

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It is also the policy of the School District to respond promptly to known allegations of sexual harassment in its educational program(s) and/or activities in a manner that is not deliberately indifferent. This process governs the School District’s response to formal complaints. It is the policy of the School District to ensure that complainants and respondents are treated equally under this process. If any opportunity to participate in the grievance process is or is not made available to one party, the same opportunity shall be made available (or unavailable) to the other party.

The fact that this process refers to complainants and respondents in the singular shall not be construed to prohibit a complaint against multiple respondents, or the consolidation of multiple complaints against a single respondent, or the consolidation against cross-complaints between the parties, provided that the allegations in said complaint(s) arise out of the same facts or circumstances.

### **II. DEFINITIONS**

A. “Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

1. A school employee conditioning the provision of an aid, benefit, or service of school 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 school’s education program or activity; or

3. Sexual assault, dating violence, domestic violence, or stalking, as those terms are defined herein.
  - a. “Sexual assault” means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
  - b. “Dating Violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Whether such a relationship exists depends on the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
  - c. “Domestic Violence” means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
  - d. “Stalking” means 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. “Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- C. “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

- D. “Party” refers interchangeably to a complainant or respondent.
- E. “Education program or activity” includes locations, events, or circumstances over which the School District exercised substantial control over both the respondent and the context in which the sexual harassment occurs.
- F. “Sufficient time to prepare,” unless otherwise stated, means two days.

### **III. ASSURANCES OF NEUTRALITY AND ADEQUATE TRAINING**

- A. A Respondent is presumed to not be responsible for the alleged conduct until a determination regarding responsibility has been made.
- B. The Title IX Coordinator, Investigator(s), and Decision-Maker(s) shall receive training regarding the definition of sexual harassment in this process, how to serve impartially, how to avoid prejudgment of the facts at issue, bias based on sex, bias in favor of complainants or respondents in general, and bias or conflicts of interest with respect to any particular student(s).
- C. The Title IX Coordinator shall receive training regarding the requirements of a formal complaint, the required contents of the notice of allegations, and the steps of the grievance process.
- D. The Investigator(s) and Decision-Maker(s) have been trained on what constitutes relevant evidence, for purposes of the investigation report and/or advisor questioning of the other party.
- E. Training materials supporting these assurances are available at the District Office.

### **IV. ADVISORS**

Complainants and respondents are permitted to have an advisor of their choice present at all proceedings that require the complainant or respondent’s attendance during the investigation. An advisor may be, but is not required to be, an attorney. Advisors will be required to agree to non-disclosure of information/data regarding the grievance process, to ensure the data privacy rights of the parties and any witnesses.

## **V. FORMAL COMPLAINTS**

- A. The term “formal complaint” means a document, either electronic or in hard copy, filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the School District investigate the allegation of sexual harassment.
- B. The complainant must be participating or attempting to participate in a School District education program or activity at the time the formal complaint is filed.
- C. A formal complaint must immediately be dismissed if:
  - 1. The conduct alleged in the formal complaint, even if proven, does not meet the definition of sexual harassment set by this policy;
  - 2. The conduct alleged in the formal complaint did not occur in the School District’s education program or activity; or
  - 3. The conduct alleged did not occur against a person in the United States.
- D. A formal complaint may be dismissed if:
  - 1. The complainant notifies the Title IX Coordinator, in writing, that they would like to withdraw the complaint;
  - 2. The respondent is no longer enrolled at or employed by the school; or
  - 3. Specific circumstances prevent the School District from gathering evidence sufficient to reach a determination as to the complaint.
- E. The parties shall be notified, in writing, if a formal complaint is dismissed and the reason(s) for the dismissal.
- F. Dismissal of a formal complaint does not preclude the imposition of discipline arising out of the same conduct for any other violations of the student code or the School District’s policies.

## **VI. NOTICE OF ALLEGATIONS**

- A. Upon receipt of a formal complaint, the Title IX coordinator will provide the parties with a written notice to all known parties containing the following:
  - 1. Notice of this grievance process, including any informal resolution process;
  - 2. Notice of the allegations, including sufficient details to the extent they are known at the time. The phrase “sufficient details” which includes, but is not limited to, the identities of the parties involved in the incident, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident. To the extent that any of these details are not known at the time the formal complaint is filed, the Title IX Coordinator must provide a supplemental notice when it learns of new or additional information;
  - 3. A statement that the respondent is presumed not responsible and that a determination regarding responsibility will be made at the conclusion of the grievance process;
  - 4. Notice that the parties may have an advisor of their choice, subject to the requirements of Section IV of this Process; and
  - 5. Notice informing the parties of any provision of the School District’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- B. The written notice described by Paragraph A must be provided to both parties with sufficient time for either party to prepare before any initial interview.

## **VII. EMERGENCY REMOVALS**

- A. Generally, consistent with the School District’s presumption of non-responsibility until the investigation has been completed and a determination of responsibility has been made, the School District will not suspend, expel, exclude, or otherwise remove a respondent while an investigation is pending under the grievance process.

- B. Notwithstanding Paragraph A of this Section, if, after undertaking an individualized safety and risk analysis, the School District determines that the respondent poses an immediate threat arising from the allegations of sexual harassment to the physical health or safety of any student or other individual, including the respondent themselves, the respondent may be removed on an emergency basis.
- C. A respondent who is removed on an emergency basis must be notified of the School District's decision and provided with an opportunity to challenge the decision immediately following removal. The respondent shall bear the burden of proving that the removal decision was incorrect.
- D. Nothing in this Section shall be construed to prevent the School District from suspending, excluding, expelling, or otherwise removing a student from school for any reason other than a pending sexual harassment investigation.
- E. The School District may place a non-student employee who is accused of sexual harassment on administrative leave pending the completion of this grievance process.
- F. **Interim Supportive Measures.** The School District should offer interim supportive measures on an equal basis to all parties. The following non-disciplinary measures are supportive measures: 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 or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Any measure that is made available to a complainant shall not be denied to a respondent, and vice versa. Any supportive measures provided to either party shall be maintained as confidential, to the extent that confidentiality will not impair the School District's ability to provide such measures.

## VIII. CONDUCT OF INVESTIGATIONS

- A. **Burden of Proof.** The School District retains, at all times, the burden of proof and the burden of gathering sufficient evidence to reach a determination regarding responsibility.

- B. **External Records.** A party's medical or psychological records may only be obtained, accessed, considered, disclosed, or otherwise used with the voluntary written consent of the eligible student or of a parent. Eligible students or parents should be advised that any medical or psychological records that are disclosed to the School District will be shared with the opposing party and the opposing party's advisor during the grievance process.
- C. **Presentation of Evidence and Identification of Witnesses.** Both parties shall have an equal opportunity to present evidence and to identify witnesses who they claim have potentially relevant evidence.
- D. **Interviews of Parties.** A party shall be notified in writing of any interview of that party with sufficient time to prepare. The written notification shall include the date, time, location, participants, and purpose of the interview. Neither a party nor that party's advisor shall be permitted to attend the interview of an adverse party.
- E. **Interviews of Witnesses.** Neither party nor their advisor shall have the right to receive advance notice of the interview of a third-party witness, nor shall any party or their advisor be allowed to attend the interview of a third-party witness
- F. **Review of Evidence.** Both parties shall be provided any evidence that is directly related to the allegations raised by a formal complaint, regardless of whether the School District intends to rely on said evidence in reaching a determination regarding responsibility, prior to completion of the investigative report. The parties, and their advisors, if any, will each have ten (10) calendar days to respond to the evidence in writing, and the investigator must consider any written submissions received within those ten days prior to completion of the investigative report.
- G. **Investigative Report.** The investigative report must fairly, and neutrally, summarize the relevant evidence.

## **IX. STANDARD OF PROOF**

In reviewing the investigation report and determining whether the respondent is responsible for the conduct alleged, the School District's decision-maker(s) shall apply the preponderance of the evidence standard.

“Preponderance of the evidence,” as used in the policy, means that the respondent will be found responsible only if it is more likely than not that he or she engaged in the conduct constituting sexual harassment, as defined by this policy.

The same standard of proof shall apply regardless of whether the respondent is a student or a staff member.

## **X. DETERMINATION OF RESPONSIBILITY**

- A. **Responding to the Completed Investigation Report.** Upon completion of the investigation report, a copy will be provided to the decision-maker. Copies shall also be provided to the complainant and respondent simultaneously. The parties, and their respective advisors, will be given the opportunity to respond to the investigation report in writing. Any such response must be delivered to the decision-maker within ten (10) calendar days from the day that the investigation report is provided to the parties.
- B. **Cross-Examination via Live Hearing.** After the investigation report has been sent to the parties, and after they have had ten days to respond in writing but before a determination regarding responsibility is made, the decision-maker will conduct a hearing where each party’s advisor of choice shall have the opportunity to cross-examine the other party and any witnesses all relevant questions and follow-up questions.
  - 1. If either party does not have an advisor of their choice prior to the hearing, the School District shall provide an advisor of their choice, free of charge, to conduct the cross-examination. Under no circumstances will the complainant or respondent be permitted to conduct the cross-examination themselves.
  - 2. The decision-maker shall exclude any questions that are not relevant. Any decision to exclude a question must be explained. The decision-maker shall determine whether a question is relevant before the party or witness being questioned provides an answer.
  - 3. Questions and/or evidence relating to the complainant’s sexual predisposition and prior sexual behavior are not relevant, unless they are offered to prove consent or to prove that the act alleged was committed by someone other than the respondent.



4. The decision-maker cannot rely on any statement of a party or witness produced during the investigation unless that party or witness submits to cross-examination at the live hearing; however, the decision-maker cannot draw an inference regarding responsibility based solely on a party or witness's absence from the hearing or refusal to answer cross-examination.
5. Any live hearing must be recorded or transcribed, and the recording or transcript must be made available to the parties for inspection and review.

C. **Cross-Examination via Written Questions.** After the investigation report has been provided to the parties, but before a decision is made regarding responsibility, the decision-maker shall provide each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness.

1. Each party must provide their written questions to the decision-maker within five days after the investigator sends the parties the written investigation report. A party who does not provide written questions by this deadline is deemed to have waived their opportunity to participate in this process.
2. The decision-maker will screen the questions for relevance within five days after receiving them. If the decision-maker determines that a question is irrelevant, the party proposing the question will receive a written explanation of why the question is not relevant and will not be asked. Questions and/or evidence relating to the complainant's sexual predisposition and prior sexual behavior are not relevant, unless they are offered to prove consent or to prove that the act alleged was committed by someone other than the respondent.
3. The party or witness to whom the written questions are proposed will have five calendar days to respond in writing. Written responses will be provided to the party proposing the questions, who will then have five calendar days to submit up to 3 follow-up questions. Follow-up questions will also be screened for relevance within five calendar days of receipt, and answers to relevant follow-up questions will be provided within five days.

4. The advisor of the party's choice may assist with the formulation of questions and of answers to questions.

D. **Written Determination Regarding Responsibility.** The decision-maker(s) shall issue a written determination simultaneously to both parties containing the following:

1. Identification of the allegations potentially constituting sexual harassment;
2. A description of the procedural steps taken under this process, including any notifications, interviews, hearings, and other methods used to gather evidence, if applicable;
3. Findings of fact supporting the determination;
4. Conclusions regarding the School District's Policies;
5. A statement of the result as to each allegation, including a determination regarding responsibility, the rationale for the result, any disciplinary sanctions imposed on the respondent, and any remedies designed to restore or preserve the complainant's equal access to the School District's education program or activity; and
6. The appeal procedure described in Section XIII of this process.

The Title IX Coordinator shall be responsible for the implementation of any sanctions or remedies described by paragraphs 5 and 6.

## **XI. SANCTIONS AND REMEDIES**

If a respondent is determined to have engaged in conduct that meets the definition of sexual harassment, discipline shall be imposed in accordance with the School District's policies and procedures, as detailed by Policy 408. The level of discipline imposed shall be determined based on the facts identified in the investigation report and relied upon by the decision-maker, the respondent's disciplinary history, the severity of the conduct, and other factors that the School District may deem relevant.

## **XII. APPEALS**

- A. Either party may appeal the decision-maker's determination, or the dismissal of a formal complaint, within ten days of the written determination or written notice of dismissal being issued.
- B. **Basis.** An appeal may be made on any of the following bases:
  - 1. A procedural irregularity affected the outcome of the matter;
  - 2. New evidence, that was not reasonably available at the time the determination regarding responsibility or dismissal was made, would affect the outcome of the matter; or
  - 3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias against the complainant or respondent in this matter, or against complainants or respondents in general.
  - 4. The School District may include other bases for appeal and they must be applicable to both parties.
- C. Appeals shall be heard by a decision-maker who did not make the initial determination regarding responsibility and who is not the investigator in this matter or the Title IX Coordinator.
- D. The decision-maker reviewing the appeal shall notify both parties when either party has filed an appeal. Both parties will have ten calendar days from when the decision-maker reviewing the appeal provides such notice to submit a written statement in support of, or challenging, the dismissal or the determination of responsibility.
- E. The appeal decision-maker shall issue a written decision simultaneously to both parties that describes the result of the appeal and provides the rationale for said result.

## **XIII. RETALIATION**

It is a violation of this policy for any individual to intimidate, threaten, coerce, or discriminate against any individual to interfere with their rights under this process or Policy 408, or because that individual has made a report or complaint, testified, assisted,

or participated or refused to participate in any manner in any process described in this process. Complaints alleging retaliation may be filed with the Title IX Coordinator.

Notwithstanding the above, it shall not be considered retaliation if the School District asserts a code of conduct violation against any individual who makes a materially false statement in bad faith. A determination regarding responsibility, standing alone, does not prove that any party made a materially false statement in bad faith.

#### **XIV. INFORMAL RESOLUTION**

At any time after a formal complaint has been filed, and before a determination regarding responsibility has been made, the School District may offer informal resolution.

Both parties must voluntarily consent in writing to participate in any informal resolution process(es). Either party retains the right to withdraw from the informal resolution process at any time before a resolution is reached and to resume the grievance process as laid out above. Once both parties have agreed to an informal resolution, however, neither party may resume the grievance process with respect to those allegations. Voluntary consent shall only be effective where the parties both receive a written notice detailing the allegations, the informal resolution process and its consequences, and the right to withdraw before a resolution is reached.

Informal resolution is not available where the complaint alleges that an employee has sexually harassed a student.

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