

**JCAC-R Sexual Harassment**

8/19/21

**RATIONALE/OBJECTIVE:**

The Cobb County School District (District) seeks to provide its students with an educational environment free from discrimination based on sex and sexual harassment of students by other students, employees, volunteers, or others over whom the District has authority in any District education program or activity. Education programs or activities include locations, events, or circumstances over which the District exercises substantial control over both the respondent and the context in which the sexual harassment occurs in accordance with Title IX of the Educational Amendments of 1972 (Title IX), 20 U.S.C. 1681, *et seq.*, and its implementing federal regulations, 34C.F.R., Part 106.

**RULE:**

See Board Policy GAEB (Harassment) and Administrative Rule GAEB-R (Harassment) for harassment among and between employees.

**A. DEFINITIONS:**

1. Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the District's Title IX Coordinator or to any official or employee of the District. This notice requirement is not met when the only District official or employee with actual knowledge is the respondent.
2. Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. If the complainant is under the age of 18, the parent or legal guardian can file a complaint and act on behalf of the student.
3. Unless otherwise specified as "calendar days", "days" for the purpose of this rule means "school days."
4. Deliberately indifferent means a response to sexual harassment that is clearly unreasonable in light of the known circumstances.
5. Formal complaint means a document filed by a complainant, complainant's parent/guardian, the designated Deputy Title IX Coordinator, the Title IX Coordinator, or someone acting as a witness or on the complainant's behalf alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment under the requirements of Title IX. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in a District education program or activity. A formal complaint may be filed with the designated Title IX Deputy Coordinator, or the Title IX Coordinator in person, by mail, or by electronic mail. Where the Deputy Title IX Coordinator or the Title IX Coordinator files a formal complaint, the Deputy Title IX Coordinator or the Title IX Coordinator is not a complainant or otherwise a party under this rule.
6. Report means communication with a local school administrator regarding an alleged violation of the District's Student Code of Conduct (Administrative Rule JCDA-R) regarding sexual harassment.
7. Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
8. Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
  - a. An employee of the District conditioning the provision of a District aid, benefit, or service on an individual's participation in unwelcome sexual conduct;

- b. 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
  - c. "Sexual assault"- an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation; or
    - (1) "Dating Violence"- sex-based violence committed by a person-
      - (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
      - (b) where the existence of such a relationship shall be determined based on a consideration of the following factors:
        - 1) The length of the relationship.
        - 2) The type of relationship.
        - 3) The frequency of interaction between the persons involved in the relationship; or
    - (2) "Domestic Violence"- sex-based violence which includes 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; or
    - (3) "Sex-based Stalking" - engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
      - (a) fear for his or her safety or the safety of others; or
      - (b) suffer substantial emotional distress.
9. "Supportive measures" means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant and/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 recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment. The District shall presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The grievance process will be followed before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. 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 and monitoring of certain areas of the campus, and other similar measures. The District shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures. The Title IX Deputy Coordinator is responsible for coordinating the effective implementation of supportive measures.

**B. GENERAL PROVISIONS:**

- 1. The District shall respond promptly in a manner that is not deliberately indifferent when it has actual knowledge of sexual harassment against a person in an education program or activity.
- 2. The District shall require that any individual designated and authorized as a Title IX Coordinator, Deputy Coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- 3. The District shall ensure that the Title IX Coordinator, Deputy Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, will 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

including questioning, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

4. The District shall ensure that decision-makers receive training on any technology to be used during questioning, and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
5. The District also shall ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train the Title IX Coordinator, Deputy Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, shall not rely on sex stereotypes and shall promote impartial investigations and adjudications of formal complaints of sexual harassment.

**C. REPORTING PROCESS:**

1. Any student who believes that he/she is or has been the victim of sexual or sex-based misconduct or has knowledge of such action perpetrated against another student should immediately report the alleged acts to any teacher, counselor, assistant principal, or principal. Any employee who receives a complaint by a student of sexual or sex-based misconduct must immediately report the complaint to the principal or to the assistant principal, if the principal is unavailable. The principal shall immediately intervene to eliminate sexual or sex-based misconduct and shall immediately report such offenses to the Title IX Coordinator or appropriate Deputy Title IX Coordinator.
2. Measures to be taken independent of receipt of a complaint shall include, but are not limited to:
  - a. Discussing the circumstances with the alleged victim;
  - b. Maintaining the anonymity of the alleged victim, if requested or deemed to be in the best interest of the involved parties;
  - c. Conducting an informal investigation to determine the validity of the allegations;
  - d. Advising the alleged offender of the complaint and directing him/her to cease the alleged objectionable behavior and any other behavior that may constitute sexual harassment;
  - e. Restricting contact between the alleged victim and the alleged offender.
3. Other personnel who have knowledge of the occurrence of alleged sexual or sex-based misconduct shall immediately make a proper report of the alleged misconduct to the appropriate principal or assistant principal or to the appropriate Deputy Title IX Coordinator. If desired, students or their parents, or other persons acting on behalf of students may directly submit reports of alleged sexual or sex-based misconduct to the appropriate Deputy Title IX Coordinator. These reports should be provided in writing on the Title IX Complaint Form. Reports may also be made during face-to-face or telephone conferences with the Title IX Coordinator or Deputy Title IX Coordinator or his/her designee.
4. The school administrators designated herein shall submit reports of alleged sexual or sex-based misconduct to the appropriate Deputy Title IX Coordinator, via transmission of a completed Title IX Complaint Form. The Complaint Form should be completed as soon as possible but no later than 48 hours after becoming aware of the incident. The Intake Form may be hand delivered or transmitted via telefax or electronic technology. The appropriate Deputy Title IX Coordinator shall review the facts presented and determine the appropriate formal or informal method of resolution, which is not necessarily limited to a formal investigation. In making this determination, the Deputy Title IX Coordinator may consult with the District's Title IX Coordinator and/or the Executive Director of Employee Relations as needed. The Superintendent, or the Board when appropriate, may appoint an individual outside the school system to investigate reports of sexual harassment.
5. As appropriate, the Title IX Coordinator, Deputy Coordinator, and/or Executive Director of Employee Relations, shall make a recommendation for resolution to the Superintendent based on the finding of formal or informal investigations or on proactive resolution efforts. The complainant his/her parents or guardians and the respondent or his/her parents or guardians will be informed of the resolution through an appropriate communication.

#### **D. SANCTIONS:**

1. Appropriate disciplinary actions will be taken against persons found to have violated this administrative rule. These actions shall include sanctions authorized by law, Board policy, the Civil Service Policy for Classified Employees, and the Code of Student Conduct and Discipline. These actions shall also include other measures designed to end sexual and sex-based misconduct and to prevent their recurrence. Due process rights shall be afforded to all affected persons, where appropriate.
2. The Superintendent shall recommend that the Board terminate the employment of all personnel found to have sexually harassed students. Due process rights shall be afforded to all affected employees, where appropriate.
3. The Executive Director of Employee Relations, or his/her designee, shall report all substantiated allegations of sexual or sex-based misconduct committed by certified personnel to the Professional Practices Section of the Professional Standards Commission. A recommendation for the revocation of the employee's teaching certificate shall be made to the PSC in all such cases. This agency has the authority to:
  - Issue warnings or reprimands;
  - Terminate, suspend, or non-renew contracts; and
  - Suspend or revoke teaching certificates.
4. Sexual or sex-based misconduct perpetrated by students will not be tolerated in the Cobb County School District. Appropriate progressive disciplinary and rehabilitation actions will be taken to resolve the problem and eliminate the possibility of its recurrence. These actions may include, but are not limited to:
  - Student counseling;
  - Family counseling;
  - Specialized training;
  - Referral to outside agencies (e.g., DFACS, mental health centers);
  - Detention;
  - In-School and Out-of-School suspensions;
  - Development of specially designed research projects;
  - Class or school transfer;
  - Revocation of out-of-zone school assignments;
  - Expulsions.
5. As appropriate, due process rights shall be afforded to students found to have exposed other students enrolled in the Cobb County School District or employees or other constituents to acts of sexual or sex-based misconduct.

#### **E. APPEALS PROCESS:**

For Employee-Respondent matters, any determination by the Superintendent may be appealed by the complainant or by the party or parties against whom the complaint has been filed. Any appeal of the notification of a case must be made in writing within 10 days of the date of the letter of determination. Any such appeal to the Board shall set forth the grounds of the appeal and shall be filed with the Superintendent, who shall transmit the same, with the record, to the Board. The Board shall determine the appeal on the record, but may hear the parties or receive additional evidence, as it shall deem proper. The decision of the Board shall be final, subject to any appeal allowed by law.

For Student-Respondent matters, please refer to the District's Title IX Grievance Process (Form JCAC-3) for appellate procedures.

#### **F. PROHIBITIONS:**

##### **1. Retaliation:**

Retaliation against individuals who file complaints of alleged sexual or sex-based misconduct or those who assist in the investigation of complaints of alleged sexual or sex-based conduct is expressly prohibited. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or harassment. Appropriate disciplinary actions shall be imposed for verified acts of retaliation.

2. **Intentional False Reporting:**  
Students who knowingly fabricate allegations of sexual or sex-based misconduct shall be subject to disciplinary actions up to and including expulsion or termination.
3. **Hindering an Investigation:**  
Individuals who withhold information, purposely provide inaccurate facts, violate privacy and confidentiality rules, or otherwise hinder an investigation of sexual or sex-based misconduct shall be subject to disciplinary action up to and including expulsion or termination.

**G. NOTICE:**

1. This rule shall be available online as part of the district's Title IX website.
2. A Notice of Nondiscrimination, inclusive of the name, mailing address, and telephone number of the department responsible for system-wide compliance with nondiscrimination provisions shall be posted annually.

**H. RIGHT TO ALTERNATIVE DISPUTE RESOLUTION PROCEDURES:**

These procedures do not deny the right of any individual to pursue other avenues of recourse, which may include, but are not limited to, mediation, filing a charge with the Equal Employment Opportunity Commission (EEOC), filing a complaint with the Office for Civil Rights (OCR), initiating a civil action, or seeking redress under state criminal statutes, policies, and procedures and/or federal laws.

**I. RETENTION OF RECORDS:**

1. Subject to the provisions of applicable law, these records shall not become a part of any student permanent record file and may be reviewed only upon the approval of the Superintendent or his/her designee. Based on a legitimate need for access to the information contained in any file, the Superintendent will determine which individuals will have such access to the files on a case-by-case basis.
2. All official employee records shall be retained by the Employee Relations Department. However, any documents regarding disciplinary action arising from any investigation shall be included in the permanent record files and personnel files, as applicable, of the individual against whom the complaint was filed. Records will be retained for the maximum time allowed for redress through actions pursued by regulatory or judicial entities.

**J. CONFIDENTIALITY OF PROCEEDINGS:**

1. In all cases, the highest degree of confidentiality allowed by law will be maintained by Cobb County School District employees to protect parties involved in investigations of sexual or sex-based misconduct.
2. Only those persons who have a need to know for purposes of the investigation or resolution of the complaint shall be informed of the case. Any individual who releases information relating to the complaint or the investigation during the course of the investigation shall be subject to disciplinary action up to and including termination.

Approved: 7/14/04  
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 Reclassified an Administrative Rule: 9/1/04  
 Revised: 8/10/05, 6/8/11  
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Legal Reference	
O.C.G.A. 45-01-0004	Whistleblower
42 USC 2000d	1964 Civil Rights Act
42 USC 2000e-2	Unlawful employment practices
20 USC 1681	Title IX of the Education Amendments of 1972