

**CHARTERS-HOUSTON SCHOOL DISTRICT**

Policy No.834

Section: OPERATIONS

# **POLICY GUIDE**

Title: Title IX Sexual Harrassment  
and Discrimination

Adopted: 7/27/20

## **POLICY NO. 834 Title IX Sexual Harassment and Discrimination**

### **1. PURPOSE**

The purpose of this Policy is to set forth the School District's procedures for responding to and investigating allegations of sexual harassment and discrimination, and to ensure compliance with Title IX and its implementing regulations as amended.

This Policy applies to all applicants for employment, employees, students, and all individuals who attend, conduct business, or participate in programs and activities operated by or controlled by the School District.

### **2. AUTHORITY**

This Policy is established to implement Title IX of the Education Amendments of 1972 (Title IX), and the regulations promulgated by the United States Department of Education relating thereto.

### **3. GENERAL STATEMENT**

The School District does not discriminate on the basis of sex in its education program or activity. The School District recognizes it is required by Title IX and its implementing Regulations to not discriminate in such manner and that this requirement not to discriminate extends to employment. Any inquiries about the application of Title IX to the School District's program or activities may be referred to the Title IX Coordinator, to the Office for Civil Rights Assistant Secretary, or both.

#### 4. POLICY AND PROCEDURES

##### A. Introduction

It is the Policy of the School District to maintain an educational and work environment that is free from sexual harassment and discrimination. The School District is committed to providing and promoting an atmosphere where employees and students can engage fully in the workplace and in the learning process. All staff and students of the School District must understand that sexual harassment, sexual discrimination, and sexual exploitation of students and employees violates this Policy and will not be tolerated. The School District will take every step to resolve complaints in a prompt manner as outlined in this Policy.

##### B. Definitions

"Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

"Education program or activity" includes locations, events, or circumstances over which the District exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

"Formal complaint" means a document filed by a complainant or signed by the Title IX Coordinator alleging a violation of this Policy by a respondent and requesting that the District investigate the allegation. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the District.

"Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute a violation of this Policy.

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

- (1) An employee of the School District conditioning the provision of an aid, benefit or service of the School District 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 District's education program or activity; or
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v) of the Clery Act, "dating violence" as defined in 34 U.S.C. 12291(a)(10) of the Violence Against Women Act (VAWA), or stalking as defined in 34 U.S.C. 12991(a)(30) of the VAWA.

"Supportive measures" are defined as 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. Supportive measures are designed to restore or preserve equal access to the School District's programs or activities without unreasonably burdening the other party, including measures to protect the safety of all parties or the educational environment, or to deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications to work or class schedules, monitoring, mutual restrictions on contact, and other similar measures.

### **C. Anti-Retaliation Assurance**

Neither the District nor any other person may intimidate, threaten or coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing Regulations, because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in any investigation, proceeding or hearing under Title IX or its implementing Regulations. This Policy seeks to encourage any individuals to express freely, responsibly, and in an orderly way any complaints or concerns regarding violations of this Policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for Code of Conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or its implementing Regulations, constitutes retaliation.

The District must keep confidential the identity of any individual who has made a report or complaint of a violation of this Policy including any individual who has made a report or filed a formal complaint; any complainant; any individual who has been reported to be the perpetrator of sex discrimination; any respondent; and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA) or as required by law, or to carry out the purposes of the Title IX Regulations, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.

Complaints alleging retaliation may be filed according to the grievance procedures set forth herein.

The exercise of rights protected under the First Amendment does not constitute prohibited retaliation.

Charging an individual with a Code of Conduct or Policy violation for making a materially false statement in bad faith in the course of the grievance proceeding does not constitute prohibited retaliation, provided however, that a determination

regarding responsibility alone is not sufficient to conclude that any party made a materially false statement in bad faith.

**D. Education & Training**

The School District will annually train, educate and advise all employees of their responsibilities under this Policy. The School District will ensure that the Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process under this Policy, receives training on: the scope of the School District's education program or activity; the definition of sexual harassment; how to conduct an investigation and grievance process (including hearings, appeals, and informal resolution processes as applicable); and how to serve impartially, including avoiding prejudgment of the facts, conflicts of interest, and bias.

Decision-makers shall receive training on any technology to be used at a live hearing and 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.

Investigators shall receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints.

The School District will engage its students in educational programming to understand sexual harassment and its effects on the educational environment and how to file a complaint.

**E. Title IX Coordinator**

The Title IX Coordinator is hereby given the authority to take all actions required of the Title IX Coordinator by Title IX and its implementing Regulations, including but not limited to the authority to coordinate the District's Title IX compliance efforts and to provide supportive measures.

**F. Making Formal Complaints and Other Reports**

**1. Informal Complaints By Any Individual**

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed

in #4 below 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.

## **2. Employee Responsibility for Reporting**

Any employee who has direct knowledge of sexual harassment or discrimination or receives a report of the same is obligated to immediately inform the Title IX Coordinator at the contact information listed at #4 below. Failure to do so may result in serious consequences for the School District and may be considered grounds for disciplinary action up to and including termination from employment.

## **3. District Response Upon Receiving an Informal Complaint or Employee Report**

Upon receiving an informal complaint or a report from an employee under #1. or #2. above, the District shall:

- a. promptly offer supportive measures to both the complainant and respondent and consider the complainant's wishes with respect to the same. The Title IX Coordinator is hereby given the authority to provide supportive measures and must contact the complainant and respondent to discuss the same;
- b. inform the complainant of the availability of supportive measures with or without the filing of a formal complaint;
- c. explain to the complainant the process for filing a formal complaint; and
- d. 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.

## **4. Formal Complaints**

Formal complaints regarding sexual harassment and sex discrimination are filed by a complainant and signed by the Title IX Coordinator alleging sexual harassment or discrimination against a respondent and requesting the School District to investigate the allegation.

A complainant may initiate the grievance process set forth herein by filing a formal complaint, or may file a formal complaint after an informal complaint or report has been made under #1 or #2 above.

A parent or guardian may file a formal complaint on a student's behalf. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the following contact information:

**Mr. Don Bennett,  
Title IX Coordinator  
2020 West Pike Street  
Houston, PA 15342  
(724) 746-1400  
don.bennett@chartiers-houstonisd.com**

**5. Reports May Be Made at Any Time**

A report may be made to the Title IX Coordinator under #1, #2 or #4 above at any time (including during non-business hours) by using any or all of the contact information listed at #4 above.

**G. Initial Response to Formal Complaints**

**1. Review of Formal Complaints/Dismissal**

If the conduct alleged does not constitute sexual harassment as defined in this Policy or sex based discrimination, did not occur in the District's educational program or activity, or did not occur in the United States, the District must dismiss the complaint under Title IX. However, such a dismissal does not preclude action under another provision of the District's Code of Conduct or other District Policy.

The District may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing, a complainant notifies the Title IX Coordinator in writing of intent to withdraw the formal complaint or any allegations therein, the respondent is no longer enrolled or employed by the District, or specific circumstances prevent the School District from gathering evidence sufficient to reach a determination.

Upon dismissal, the District must promptly send written notice of the dismissal and reasons for the dismissal to both parties along with the procedures to appeal.

The District may consolidate formal complaints as to allegations against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations arise out of the same facts or circumstances.

**2. Informal Resolution**

At any time after the filing of a formal complaint, the District may facilitate an informal resolution process, which does not involve a full investigation and adjudication, provided that both parties provide written consent (see also II.2.a. below.) The District must disclose in writing to both parties the allegations and the requirements of the informal resolution process, including the circumstances

under which it precludes a party from resuming a formal complaint arising from the same allegations after a mandatory or permissive dismissal through the informal resolution process, provided, however, that at any time prior to agreeing to a resolution, any party may withdraw from the informal process and resume the grievance process.

The District shall also disclose any consequences resulting from participation in the informal resolution process, including the records that will be maintained or shared.

The informal resolution process shall be concluded no later than thirty (30) days after the formal complaint is filed.

Informal resolution is not a process available or used to resolve allegations that an employee sexually harassed a student.

The informal resolution process shall include measures to ensure equity for both parties.

The District shall not require the informal resolution process, nor shall it require that individuals waive any of their rights to the grievance process following the filing of a formal complaint.

## **H. Grievance Process**

### **1. In General**

- a. After the filing of a formal complaint, the District shall follow the grievance process set forth in this Section H. Overall, this process shall:
  - i. include the presumption of the respondent's innocence until a determination regarding responsibility is made at the conclusion of the grievance process
  - ii. be free of bias (including bias for or against complainants or respondents generally or an individual complainant or respondent) and discriminatory treatment of any party; credibility determinations may not be based on a person's status as a complainant, respondent or witness.
  - iii. include an objective evaluation of all evidence (including both inculpatory and exculpatory)
  - iv. require that any person involved in the process not have a conflict of interest
  - v. include reasonably prompt timeframes

- vi. include a description of potential outcomes and remedies; remedies shall be designed to restore or preserve equal access to the District's education program or activity; such remedies may include supportive measures, but need not be non-disciplinary or non-punitive, and need not avoid burdening the respondent; the Title IX Coordinator is responsible for the effective implementation of any remedies
  - vii. not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege
  - viii. require procedures for appeal by the respondent or complainant
  - ix. the District shall not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence
- b. The grievance process may be temporarily delayed, or a limited extension of the timeframes listed in this Policy may be permitted, for good cause, with written notice to the complainant and respondent of the delay or extension and the reasons for the action. Good cause may include 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.
- c. The District may consolidate formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations arise out of the same facts or circumstances.

## **2. Notice of Allegations**

Upon receipt of a formal complaint of sexual harassment, the Title IX Coordinator must provide to the complainant and respondent notice informing them of:

- a. the investigation process including the availability of an informal resolution process
- b. the allegations, including sufficient details known at the time for respondent to prepare a response prior to the initial interview. Sufficient details include the identity of the parties involved, the conduct allegedly constituting a violation of this Policy, and the date and location of the alleged incident, if known.



- ©. the fact that the respondent is presumed not responsible for the alleged conduct and that responsibility will be determined upon conclusion of the grievance procedure
- d. the fact that each party may have an advisor of their choice
- e. the fact that each party will have equal opportunity to present evidence and inspect and review evidence received
- f. a statement prohibiting knowingly making false statements or knowingly submitting false information during the investigation process

If, during the course of investigation, new allegations are made, the District cannot include the new conduct in its investigation unless it provides written notice to both parties.

### **3. Specific Notice, Evidence and Proof Issues**

- a. The burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility is on the School District.
- b. Both parties will be given an equal opportunity to present witnesses, including fact and expert witnesses and other inculpatory and exculpatory evidence. Each party will have an opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including evidence the School District does not intend to rely on in reaching a determination and inculpatory and exculpatory evidence, so that each party may meaningfully respond to the evidence prior to the conclusion of the investigation.

The District shall not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

- c. All parties whose participation is invited or expected shall be provided with written notice of the date, time, location, participants and purpose before all hearings, investigative interviews, or other meetings with at least 10 calendar days prior notice for the party to participate.
- d. The District cannot access, consider, disclose or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the District obtains that party's voluntary, written consent to do so for a grievance process under this Policy.

**4. Written Response to Evidence**

- a. Prior to completion of the investigative report, the District shall send to each party and the party's advisor, if any, the evidence subject to inspection and review, in an electronic format or 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. The District shall make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

**5. Investigative Report**

- a. The investigative report must summarize relevant evidence and must be provided to both parties and their advisors, if any, at least 10 calendar days prior to a hearing or other time of determination regarding responsibility, for their further review and written response. The report may be provided in electronic format or hard copy.

**6. Written Cross-Examination**

- a. Each party may submit relevant written cross-examination questions to the decision-maker to distribute to the other party. Each party will have 10 calendar days to prepare and file a response to the written cross-examination with the decision-maker.

**7. Written Determination**

- a. The decision-maker (who is not permitted to be the same person as the Title IX Coordinator or investigator) will conduct an objective review of all relevant evidence.
- b. The decision-maker shall issue a written determination regarding responsibility or dismissal within 30 calendar days of the parties' completion of responses to written cross-examination.
- c. The standard of evidence upon which the written determination shall be based is a preponderance of the evidence.
- d. The written determination shall include identification of the allegations; a description of the procedural steps taken from receipt of the formal complaint through determination, including notice to the parties, interviews, site visits, and other methods used to gather evidence and hearings held; findings of fact to support the determination; conclusions regarding the School District's Code of Conduct as applied to the facts; a

statement of, and rationale for, the result as to each allegation, including the determination regarding responsibility; any disciplinary sanctions; and whether remedies designed to restore or preserve equal access to the School District's education program or activity will be provided.

- e. The written determination shall be issued to both parties simultaneously and shall include the process to appeal.
- f. The written determination becomes a final adjudication unless a timely appeal is filed. If an appeal is filed, the determination regarding responsibility becomes final on the date that the District provides the parties with the written determination of the result of the appeal. If an appeal is not filed, the determination regarding responsibility becomes final on the date on which an appeal would no longer be considered timely.

## **8. Appeals**

- a. Upon receipt of a written determination, or upon the District's dismissal of a formal complaint or any allegation therein, either party may file notice of an appeal to the Board of School Directors within 15 calendar days of receipt of the written determination.
- b. The Board of School Directors shall hear appeals:
  - i. involving a procedural irregularity that affected the outcome of the matter;
  - ii. new evidence that was not reasonably available at the time of determination, that could affect the outcome; and
  - iii. allegations that the Title IX Coordinator, investigator or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or against the complainant or respondent in this specific manner, that affected the outcome of the matter.
- c. The Board of School Directors has discretion to hear an appeal by either party on any additional bases.
- d. A notice of appeal may be filed electronically, in person or by regular mail written to the attention of the Superintendent of Schools. Upon notification of the filing of a Notice of Appeal and the Board of School Directors role as decision-maker on appeal, each party shall have 30 calendar days to submit a written statement in support of, or challenging, the outcome of the written determination.
- e. The Board of School Directors shall issue a written decision simultaneously to both parties describing the result of the appeal and the

rationale within 45 calendar days of the submission of both parties' written statements.

**9. Remedies**

- a. The complainant shall be provided with an appropriate remedy or remedies where a determination of responsibility has been made against the respondent through the grievance process.
- b. Remedies shall be designed to restore or preserve equal access to the District's education program or activity. Such remedies may include supportive measures, but need not be non-disciplinary or non-punitive, and need not avoid burdening the respondent.
- c. The Title IX Coordinator is responsible for the effective implementation of any remedies.

**10. Emergency Removal**

Nothing in this Policy prohibits the District from removing a respondent from the District's education program or activity on an emergency basis, provided that the District undertakes an individualized safety and risk analysis, 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 provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

Nothing in this Policy precludes the District from placing a non-student employee respondent on administrative leave during the pendency of a grievance process. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

**I. Record Keeping**

- a. The District shall maintain for a period of seven (7) years the following records:
  - i. each sexual harassment investigation including an determination regarding responsibility and any audio or audio visual recording or transcript required under the applicable Regulations;
  - ii. any sanctions imposed on the respondent;
  - iii. any remedies and supportive measures;

- iv. any appeal and the result therefrom;
  - v. any informal resolution and the result therefrom; and
  - vi. all materials used to train the Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process. The District must also make these training materials publicly available on its website.
- b. In each instance, the District must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to its education program or activity. If the District does not provide a complainant with supportive measures, then the District must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken.

