

**4670.00 PROCEDURE FOR COMPLAINTS OF SEXUAL HARRASSMENT OF
THE SOUTH CENTRAL NEBRASKA UNIFIED SCHOOL DISTRICT #5**

A. Complaint Procedure - Generally

All employees are responsible for helping to prevent sexual harassment. Employees, or students, who believe they have been subjected to, or believe they have witnessed sexual harassment should follow these procedures:

1. Directly inform the person engaging in the discrimination or harassment that such conduct is offensive and must stop.
2. For employee reporters, contact your principal or supervisor or the principal or supervisor of the offending person, the Title IX Coordinator, the Executive Director of Human Resources, if you do not wish to communicate directly with the person whose conduct is offensive or if direct communication with the offending person has been ineffective.
3. Report the matter to the Title IX Coordinator, or the Director of Human Resources, if the offending conduct continues or has not been resolved to your satisfaction after you have reported the matter to a principal or supervisor.
4. For student reporters, contact any teacher, counselor, or administrator.
5. Report to the Title IX Coordinator if you are the adult to whom the student has made a report so that the matter can be properly resolved. The Title IX Coordinator may file a formal complaint and begin the following complaint procedure.

Allegations of sexual harassment or discrimination shall be investigated and if substantiated, corrective or disciplinary action taken, up to and including dismissal from employment if the offender is an employee, or suspension and/or expulsion, if the offender is a student. Retaliatory action will not be taken against an employee for reporting discrimination or harassment.

B. Response to a Formal Complaint:

1. Filing Formal Complaint: An employee or student can allege sexual harassment by filing a formal complaint in writing with the Title IX Coordinator in person or by mail, or by electronic mail using the following contact information:

TITLE IX COORDINATOR CONTACT INFORMATION
Amanda Skalka
30761 Hwy 14, Fairfield, NE 68983
402-726-2412
askalka@southcentralusd.us

The formal complaint must be signed by the complainant or by the Title IX Coordinator.

The following procedures apply only in the event that a formal complaint is filed. All other allegations of sexual harassment shall be resolved using the general complaint procedure. Any timelines set forth in the following procedures may be extended by the Title IX Coordinator with notice to the parties.

2. Immediate Actions Upon Receipt of Formal Complaint: Upon receipt of a formal complaint, the Title IX Coordinator shall provide the following to all known parties of (A): The complaint procedure as outlined in this regulation; and (B): Notice of the allegations of sexual harassment including (i) the identities of the parties involved, if known, (ii) the conduct allegedly constituting sexual harassment, and (iii) the date and location of the alleged incident.

The parties to the formal complaint may select an advisor of their choice, who may be, but is not required to be an attorney.

3. Investigation of Formal Complaint: Upon receipt of a formal complaint, the Title IX Coordinator shall notify the Investigator. The Investigator will promptly investigate all complaints of discrimination, even if an outside entity or law enforcement agency is investigating a complaint involving the same facts and allegations. The Investigator will not wait for the conclusion or outcome of a criminal investigation or proceeding to begin an investigation required by this complaint procedure. If the allegation(s) involve possible criminal conduct, the District will notify the complainant of his or her right to file a criminal complaint, and District employees will not dissuade the complainant from filing a criminal complaint either during or after the District's investigation.

The Investigator will aim to complete its investigation within a reasonable time frame as determined by the Title IX Coordinator. The factors to determine a reasonable time frame include, but are not limited to the allegations of the formal complaint, the number of witnesses that may need to be interviewed, and whether the police are also conducting an investigation into the allegations. The time frame originally set by the Title IX Coordinator may be extended by the Title IX Coordinator, upon notice to the parties, as he or she deems necessary to complete the investigation. Periodic status updates will be given to the parties, when appropriate.

(A) *Neutrality:* The Title IX Coordinator, investigator, decision-maker, or any person designated by the District to facilitate this complaint procedure, shall not have any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The District shall ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates this complaint procedure shall receive training on the definition of sexual harassment in accordance with this regulation, the scope of the District's education program or activity, how to conduct an investigation and complaint process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the fact at issue, conflicts of interest, and bias. The District shall ensure that the

individuals involved in the complaint procedure receive training on issues of relevance of questions and evidence and on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

(B) *Burden of Production:* It shall be the Investigator's burden to gather evidence sufficient to reach a determination regarding responsibility. To reach a determination, the investigation will include, but is not limited to:

- a. Providing the parties with the opportunity to present witnesses and provide evidence.
- b. An evaluation of all relevant information and documentation relating to the alleged discriminatory conduct.
- c. For allegations involving harassment, some of the factors the District will consider include: 1) the nature of the conduct and whether the conduct was unwelcome, 2) the surrounding circumstances, expectations, and relationships, 3) the degree to which the conduct affected one or more students' education, 4) the type, frequency, and duration of the conduct, 5) the identity of and relationship between the alleged harasser and the suspect or suspects of the harassment, 6) the number of individuals involved, 7) the age (and sex, if applicable) of the alleged harasser and the alleged victim(s) of the harassment, 8) the location of the incidents and the context in which they occurred, 9) the totality of the circumstances, and 10) other relevant evidence.
- d. A review of the evidence using a "preponderance of the evidence" standard (based on the evidence, is it more likely than not that discrimination, harassment, or retaliation occurred?)

(C) *Rights of the Parties:* The respondent is entitled to a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the complaint process.

The Investigator must provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

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

The Investigator shall provide the parties with the same opportunities to have others present during any complaint proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice if the Investigator deems appropriate. However, the Investigator may establish restrictions regarding the extent to which the advisor may participate in the proceedings, if the restrictions apply equally to both parties.

The Investigator shall provide to all witnesses expected to attend a meeting notice of the date, time, location, participants, and purpose of all hearings within 2 days of the meeting.

Up until the conclusion of the investigation, the parties shall have an equal 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. This includes the evidence upon which the Investigator does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence obtained from any source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

The District retains the right to place a non-student employee respondent on administrative leave during the pendency of the investigation. The District also retains the right to remove a respondent from the District's educational program prior to the conclusion of the investigation. In the event of a removal, the respondent shall have the opportunity to challenge the decision for removal.

(D) *Conclusion of Investigation:* Prior to the conclusion of the investigation, the investigator shall send each party and the party's advisor, if any, the evidence that is subject to inspection and review in an electronic format or a hard copy. The parties shall then have ten (10) days to submit a written response, which the investigator will consider.

Once the investigator has considered the written statements of the parties, if any, and any questions of the parties, if any, the investigator shall create an investigative report that fairly summarizes relevant evidence. The investigator shall then submit the written investigation report to the decision-maker. The parties shall each receive a copy of the final investigative report at the same time as the decision-maker.

4. Decision of Responsibility: The decision-maker, shall review the investigative report. Prior to coming to a determination regarding responsibility, the decision maker shall provide 10 days for each party to submit written, relevant questions that a party wants asked of any party or witness, provide each party with answers, and allow for additional, limited follow-up questions from each party.

Once the decision maker has considered the written questions of the parties, if any, the decision maker shall issue a written determination regarding responsibility by a preponderance of the evidence within a reasonable time frame as determined by the Title IX Coordinator. The decision-maker shall consider all relevant evidence, including inculpatory and exculpatory evidence, and will not consider the credibility of the evidence to be based on a person's status, such as complainant, respondent, or witness. The decision-maker shall provide the written determination to both parties simultaneously. The written determination must include:

- a. Identification of the allegations potentially constituting sexual harassment;
- b. 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 evidence;
- c. Findings of fact supporting the determination;

- d. Conclusions regarding the application of each recipient's code of conduct to the facts;
- e. A statement of, and rationale for, the results as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
- f. The recipient's procedures and permissible bases for the complainant and respondent to appeal.

The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Sec. 11232g; 34 C.F.R. Part 99, permits the District to disclose relevant information to a student who was discriminated against or harassed.

5. Supportive Measures and Disciplinary Actions:

Throughout the investigation, either party may be entitled to supportive measures. Supportive measures are 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 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, to deter sexual harassment.

Supportive measures may include, but are not limited to, 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. 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.

At the conclusion of the investigation, the Decision-Maker may institute disciplinary measures to the respondent if the Decision-Maker determines that the respondent engaged in sexual abuse or harassment. Disciplinary measures may include, but are not limited to, in school suspension, out of school suspension, expulsion, and in the case of an employee disciplinary action up to and including dismissal from employment. **This regulation does not limit or prohibit the District from instituting disciplinary measures if in the course of the investigation it determines that the complainant or respondent violated the student code of conduct.**

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

C. Appeals

If either party is not satisfied with the outcome of the investigation and the decision of the decision-maker, they may appeal on the following bases:

- a. Procedural irregularity that affected the outcome of the matter;
- b. 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
- c. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against the complainant or respondent generally or the individual complainant or respondent that affected the outcome of the matter.

The request for an appeal shall be in writing and submitted on the appropriate document. The appeal document shall be submitted to the Superintendent of Schools.

Upon notice of an appeal by either party, the Superintendent of Schools shall notify the other party in writing when the appeal is filed and of the appeal procedures, which apply equally to both parties.

The Superintendent of Schools shall give both parties a reasonable, and equal opportunity to submit a written statement in support of, or challenging the outcome.

The Superintendent of Schools shall review the investigative report, decision-maker's determination, and written statements of the parties and then issue a written decision describing the result of the appeal and the rationale for the result. The Superintendent of Schools shall provide the written decision simultaneously to both parties.

D. Informal Resolution

If a formal complaint is filed, the District may offer the complainant and respondent the opportunity to participate in an informal resolution process. The informal resolution process may take place at any time prior to reaching a determination regarding responsibility. The informal resolution process shall only take place upon:

- a. Written notice to both parties disclosing: the allegations, 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 resolution process and resume the complaint process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- b. The parties' voluntary, written consent to the informal resolution process; and
- c. That the allegations of the formal complaint do not involve any allegations that

an employee sexually harassed a student.

E. Record Keeping

The District will maintain relevant documentation obtained during the investigation and documentation supportive of the findings and any subsequent determinations, including the investigative report, witness statements, interview summaries, and any transcripts or audio recordings, pertaining to the investigative and appeal proceedings for a period of seven years.

SEXUAL HARASSMENT COMPLAINT FORM OF THE SCNUSD #5

The South Central Nebraska Unified School District #5 does not discriminate on the basis of sex in any educational program or activity that it operates. The District is required by Title IX (20 U.S.C. § 1681) and 34 CFR Part 106 not to discriminate in any such manner. This requirement not to discriminate also applies to admission and employment. Any inquiries about the application of Title IX may be referred to the District's Title IX Coordinator, to the Assistant Secretary of the Office of Civil Rights, or both.

Refer to Board Policy 4116.11 for the particulars of the formal complaint process. You may attach additional materials to this form if needed.

The Title IX Coordinator may be contacted if you have questions about filling out this complaint form:

Amanda Skalka
30671 Highway 14 Fairfield, NE 68938
402-726-2412
askalka@southcentralusd.us

Name: _____ Date: _____

Note: You may attach additional documentation to your complaint if needed.

(1) Description of the allegation:

(2) Name of Respondent:

(3) Names of any witnesses to the matter being complained about:

(4) Identify and attach any document supporting the complaint:

(5) Relief requested (what I want done in response to this complaint):

Please Note: By filing a formal complaint under Board Policy 4116.11 you are agreeing to the following terms:

- Your name and contact information shall be shared with the respondent to the formal complaint.
- Specifics of your allegations shall be shared with the respondent to the formal complaint.
- Any evidence obtained during the scope of the investigation into the formal complaint shall be shared with you and the respondent to the formal complaint equally.
- The respondent is presumed not responsible for the allegations alleged in the formal complaint.
- You will actively participate in the complaint process as requested by the Title IX Coordinator, Investigator, Decision-Maker, and Appeals Coordinator.
- You understand that the complaint process as outlined in Board Policy

4116.11 has federally mandated timelines and require this complaint process to take a minimum of 20 days, in addition to the time required for the investigation, decision-making, and appeal process.

- You understand that you and the respondent to the formal complaint have the right to appeal any decision of responsibility made by the Decision-Maker.
- You understand that any decision made by the Appeals Coordinator is final.

: By checking or initialing this box, I DO give consent to the formal complaint process and I do agree to the terms outlined above.

: By checking or initialing this box, I do NOT give consent to the formal complaint process and I do not agree to my identity being shared with the respondent to this complaint except as necessary to resolve my complaint. By checking this box, I am opting for my allegations to be treated under Subsection A of Board Policy 4116.11 and for my allegations to be treated as an informal complaint. I understand that under Subsection A of Board Policy 4116.11 the District will nonetheless investigate and take prompt and effective action to remediate the concerns I have raised, if appropriate, such as supportive measures.

The undersigned states: The facts in this complaint are true to the best of my knowledge, information and belief. I give permission for an investigation to be made into this complaint. I understand that the District will take steps to prevent me from being retaliated against for filing this complaint, that I am to notify the District if any such retaliation occurs, and that the District will take prompt and strong responsive action if retaliation occurs.

Signature: _____

Date: _____

Received by: _____

Date: _____

Title IX Coordinator: _____

Date: _____

Received: _____

NOTICE OF FORMAL COMPLAINT OF SEXUAL HARASSMENT

The South Central Nebraska Unified School District #5 does not discriminate on the basis of sex in any educational program or activity that it operates. The District is required by Title IX (20 U.S.C. § 1681) and 34 CFR Part 106 not to discriminate in any such manner. This requirement not to discriminate also applies to admission and employment. Any inquiries about the application of Title IX may be referred to the District's Title IX Coordinator, to the Assistant Secretary of the Office of Civil Rights, or both.

You are hereby notified that a formal complaint of sexual harassment has been filed against you pursuant to Board Policy 4116.11.

As required under federal law, the South Central Nebraska #5 Unified School District shall engage in the formal complaint process as outlined in Board Policy 4116.13 [attached].

Below are the allegations made in the formal complaint (or, the complaint is attached):

Complainant: _____

Date of alleged incident: _____

Location of alleged incident: _____

Alleged details of incident:

You have the following rights throughout this formal complaint process:

- You are presumed not responsible for any of the allegations alleged above until a formal investigation leads the decision-maker to a conclusion that the preponderance of the evidence establishes you have committed the above alleged conduct.
- You have the right to select an advisor of your choice to guide you through the formal complaint process, who may or may not be an attorney.
- You have the right to inspect and review evidence in this formal complaint process as outlined in Board Policy 4116.11.

Please note that knowingly making false statements or knowingly submitting false information during the complaint process is strictly prohibited by Board Policy 4116.11.

Title IX Coordinator: _____

Amanda Skalka
30671 Highway 14
Fairfield, NE 688938
402-726-2412
askalka@southcentralusd.us

Date: _____

POLICY ADOPTED: August 2020