



Book	Board Policy Manual 2020
Section	7000 Students
Title	Discrimination and Harassment of Students
Code	7550-R
Status	Active
Adopted	December 21, 2021

**SUBJECT: DISCRIMINATION AND HARASSMENT OF STUDENTS REGULATION**

This regulation sets forth detailed guidelines for reporting, investigating, and remediating allegations of discrimination, harassment, including sexual harassment, hazing, and bullying of students at the Berlin Central School District (the District). This policy prohibits discrimination, harassment, bullying, and cyberbullying against students in school based on any of the following protected characteristics: race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (including gender identity and expression), sex, or any other characteristic protected by federal or state law.

NOTE: if a Formal Title IX Complaint is made under Policy No. 3130, this policy DOES NOT apply. However, if the Formal Title IX Complaint is dismissed, the District may still choose to investigate the alleged sexual harassment under this policy, if the District determines that the alleged sexual harassment may potentially violate this policy.

This policy prohibits discrimination, harassment, hazing, and bullying of students by others in the District’s environment, including both students and employees. However, discrimination and harassment of employees and certain non-employees by others, including students, is covered by Policy #3420 and #3420-R, Anti-Discrimination and Anti-Harassment of Employees and Certain Non-Employees, and/or the Formal Title IX Complaint Policy, No. 3130.

**Definitions**

A. Harassment and Bullying – the creation of a hostile environment by conduct or by threats, intimidation, or abuse, including cyberbullying, that has or would have the effect of unreasonably and substantially interfering with a student’s educational performance, opportunities or benefits, or mental, emotional, or physical well-being; or reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; or reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student; or occurs off school property and creates or would foreseeably create a risk of substantial disruption within the school environment, where it is

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foreseeable that the conduct, threats, intimidation or abuse might reach school property.

Acts of harassment and bullying shall include, but not be limited to, those acts based on a person’s actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex. For the purposes of this definition the term “threats, intimidation or abuse” shall include verbal and non-verbal actions.

B. Material Incident of Harassment, Bullying, and/or Discrimination – a single verified incident or a series of related verified incidents where a student is subjected to harassment, bullying and/or discrimination by a student and/or employee on school property or at a school function. This term includes a verified

incident or a series of related verified incidents of harassment or bullying that occur off school property where such acts create or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property, and is the subject of a written or oral complaint to the Superintendent, principal, or their designee, or other school employee.

Material incidents of harassment, bullying, and/or discrimination would include, but are not limited to: threats, intimidation or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender, or sex.

C. Harassment – the creation of a hostile environment by conduct or verbal threats, intimidation, or abuse that has or would have the following effect:

reasonably and substantially interfering with a student's educational performance, opportunities or benefits; or

would reasonably be expected to cause a student to fear for his or her physical safety.

D. Discrimination – the act of denying rights, benefits, justice, equitable treatment or access to facilities available to all others, to an individual or group of people because of the group, class or category to which that person belongs. It includes any form of discrimination against students prohibited by state or federal law such as, for example, the denial of equal treatment, admission and/or access to programs, facilities and services based on the person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (including gender identity), or sex.

E. Bullying - an unwanted, aggressive behavior that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time. Bullying can occur before and after school hours, in a school building, on a playground, on a school bus while a student is traveling to or from school, or on the Internet.

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According to the United States Department of Education (USDOE), [www.stopbullying.gov/what-is-bullying/definition/index.html](http://www.stopbullying.gov/what-is-bullying/definition/index.html), bullying generally involves the following characteristics:

An Imbalance of Power: Students who bully others use their power, such as physical strength, access to embarrassing information, or popularity, to control or harm others. Power imbalances can change over time and in different situations, even if they involve the same people.

The Intent to Cause Harm: Determining the intent of an individual who demonstrates bullying behaviors may be difficult. The perception of the person who is the victim of those behaviors should also be considered.

Repetition: Bullying behaviors generally happen more than once or have the potential to happen more than once.

Examples of bullying include, but are not limited to:

Verbal: Name-calling, teasing, inappropriate sexual comments, taunting, and threatening to cause harm.

Social: Spreading rumors about someone, excluding others on purpose, telling other students not to be friends with someone, and embarrassing someone in public.

Physical: Hitting, punching, shoving, kicking, pinching, spitting, tripping, pushing and taking or breaking someone's things.

F. Cyberbullying – harassment or bullying that happens through any form of electronic communication. It includes but is not limited to text or images, posted on personal web sites, blogs or transmitted via email, discussion groups, message boards, chat rooms, instant messages, or via cellular phones.

G. Hazing – a form of harassment that involves committing an act against a student or coercing a student into committing an act that creates a risk of emotional, physical, or psychological harm to a person, in order for the student to be initiated into or affiliated with a student organization, or for any other purpose. The fact that the victim may consent to the act does not excuse the behavior or lessen the offense.

H. Sexual harassment – harassment of students on the basis of sex, gender and/or sexual orientation that is abusive and illegal behavior and that harms victims and negatively impacts the school culture by creating an environment of fear, distrust, intimidation and intolerance.

Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, or verbal, nonverbal or physical aggression, intimidation or hostility that is based on actual or perceived gender and sexual stereotypes.

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School-related conduct that the District considers unacceptable and which may constitute sexual harassment includes, but is not limited to, the following:

- rape, attempted rape, sexual assault, attempted sexual assault, forcible sexual abuse, hazing, and other sexual and gender-based activity of a criminal nature as defined under the State Penal Law;
- unwelcome sexual advances or invitations or requests for sexual activity, including but not limited to those in exchange for grades, promotions, preferences, favors, selection for extracurricular activities, homework, etc., or when accompanied by implied or overt threats concerning the victim's school evaluations, other benefits or detriments;
- unwelcome and/or offensive public sexual display of affection, including kissing, hugging, making out, groping, fondling, petting, inappropriate touching of one's self or others (e.g., pinching, patting, grabbing, poking), sexually suggestive dancing, and massages;
- any unwelcome communication that is sexually suggestive, sexually degrading or derogatory or implies sexual motives or intentions, such as sexual remarks or innuendoes about an individual's clothing, appearance or activities; sexual jokes; sexual gestures; public conversations about sexual activities or exploits; sexual rumors and "ratings lists"; howling, catcalls, and whistles; sexually graphic computer files, messages or games, etc;
- unwelcome and offensive name calling or profanity that is sexually suggestive or explicit, sexually degrading or derogatory, implies sexual intentions, or that is based on sexual stereotypes or sexual orientation, gender identity or expression;
- unwelcome physical contact or closeness that is sexually suggestive, sexually degrading or derogatory, or sexually intimidating such as the unwelcome touching of another's body parts, cornering or blocking an individual, standing too close, spanking, pinching, following, stalking, frontal body hugs, etc.;
- unwelcome and sexually offensive physical pranks or touching of an individual's clothing, such as hazing and initiation, "streaking," "mooning," "snuggies" or "wedgies" (pulling underwear up at the waist so it goes in between the buttocks), bra-snapping, skirt "flip-ups," "spiking" (pulling down someone's pants or swimming suit); pinching; placing hands inside an individual's pants, shirt, blouse, or dress, etc.;
- unwelcome leers, stares, gestures, or slang that are sexually suggestive; sexually degrading or derogatory or imply sexual motives or intentions;
- clothing with sexually obscene or sexually explicit slogans or messages;
- unwelcome and offensive skits, assemblies, and productions that are sexually suggestive, sexually degrading or derogatory, or that imply sexual motives or intentions, or that are based on sexual stereotypes;
- unwelcome written or pictorial display or distribution (including via electronic devices) of pornographic or other sexually explicit materials

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such as signs, graffiti, calendars, objects, magazines, videos, films, Internet material, etc.;

- other hostile actions taken against an individual because of that person's sex, sexual orientation, gender identity or transgender status, such as interfering with, destroying or damaging a person's work or school area or equipment; sabotaging that person's work or school activities; bullying, yelling, or name calling; or otherwise interfering with that person's ability to work or participate in school functions and activities; and

- any unwelcome behavior based on sexual stereotypes and attitudes that is offensive, degrading, derogatory, intimidating, or demeaning, including, but not limited to:

- o disparaging remarks, slurs, jokes about or aggression toward an individual because the person displays mannerisms or a style of dress inconsistent with stereotypical characteristics of the person's

sex;

- o ostracizing or refusing to participate in group activities with an individual during class projects, physical education classes or field trips because of the individual's sex, gender expression or gender identity; or

- o taunting or teasing an individual because they are participating in an activity not typically associated with the individual's sex or gender.

For purposes of this regulation, action or conduct shall be considered "unwelcome" if the student, did not request or invite it and regarded the conduct as undesirable or offensive.

Sexual harassment may occur on school grounds, school buses and at all school-sponsored activities, programs and events, including those that take place at locations outside the District, or outside the school setting if the harassment impacts the individual's education in a way that violates their legal rights, including when the harassment is done by electronic means (including on social media).

Prevention

Prevention is the cornerstone of the District's effort to address bullying. The components of such an effort involve the following:

- Following the principles and practices of "Educating the Whole Child Engaging the Whole School: Guidelines and Resources for Social and Emotional Development and Learning (SEDL) in New York State – Adopted by the Board of Regents July 18, 2011." District curriculum will emphasize developing empathy, tolerance and respect for others.
- Learning about and identifying the early warning signs and precursor behaviors that may lead to bullying.

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- Gathering information about bullying at school directly from students (through surveys and other mechanisms); analyzing and using the data gathered to assist in decision-making about programming and resource allocation.
- Establishing clear school wide and classroom rules about bullying consistent with the District's code of conduct.
- Training adults in the school community to respond sensitively and consistently to bullying.
- Raising awareness among adults, through training, of the school experiences of marginalized student populations (as enumerated in the Definitions section above), social stigma in the school environment, gender norms in the school environment, and strategies for disrupting bullying or other forms of violence.
- Providing adequate supervision, particularly in less structured areas such as in the hallways, cafeteria, school bus and playground.
- Raising parental awareness and involvement in the prevention program and in addressing problems.
- Using educational opportunities or curriculum, including, if applicable, the Individual Educational Program (IEP), to address the underlying causes and impact of bullying.

The Superintendent will appoint a District-wide bullying prevention committee, chaired by the Districtwide DASA Coordinator. The committee will include representation from staff, administration, students and parents. The committee will assist with the development and implementation of the prevention and intervention program, which may include the strategies listed above. Building-level committees will be appointed by the building principal and will include representation from staff, administration, students and parents associated with that building.

Intervention

Intervention by adults and bystanders, including students, with proper training can be an important step in preventing escalation and resolving issues at the earliest stages. Remedial responses to harassment, bullying and/or discrimination will likely involve staff intervention. Responses may include measures designed to correct the behavior, prevent another occurrence of the behavior, and protect the targeted student. Remediation can be targeted to the individual(s) involved in the aforementioned behavioral approaches, or environmental approaches which are targeted to the school or District as a whole.

In addition, intervention will focus upon the safety of the targeted student. Staff who are aware of incidents of harassment, bullying and/or discrimination are expected to refer

the targeted student to designated resources for assistance and/or intervene in accordance

#### Role of the Dignity Act Coordinator

The Board of Education will annually designate a staff member, who has been thoroughly trained in human relations in the areas of race, color, weight, national origin,

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ethnic group, religion, religious practice, disability, sexual orientation, gender (including gender identity and expression), and sex, as the Dignity Act Coordinator (DASA Coordinator) for each school, accountable for implementation of this policy. In addition, one will be designated as the District-wide coordinator who will be responsible for ensuring equivalency in programming across buildings. The building-level DASA Coordinator will be responsible for coordinating and enforcing this policy and regulation in the school to which they are assigned, including but not limited to coordination of:

- The work of the building-level committees
- Professional development for staff members
- The complaint process
- Management of the Dignity Act's civility curriculum components

#### Provisions for Students Who Do Not Feel Safe at School

The District acknowledges that, notwithstanding actions taken by the District, intervention might require a specific, coordinated approach, if a student does not feel safe at school. Students who do not feel safe at school are limited in their capacity to learn and reach their academic potential. Staff, when aware of incidents of harassment, bullying and/or discrimination should determine if accommodations are needed in order to help ensure the safety of the student and bring this to the attention of the building principal, his/her designee, or other staff as determined by the principal/designee. The building principal, or designated staff, the student, and the person in parental relation to the student shall work together to define and implement any needed accommodations. The District recognizes that there is a need to balance accommodations that enhance student safety against the potential of further stigmatizing the targeted student. Therefore, each case shall be handled individually, and the student, person in parental relation, and school administration shall collaborate to establish safety provisions that best meet the needs of the student. Follow-up discussion and/or meetings will be scheduled, as needed, to ensure that safety concerns have been adequately addressed and to determine when and if accommodations need to be added, changed, or discontinued.

#### Reporting Complaints

Students who have been subjected to harassment, bullying and/or discrimination, persons in parental relation whose children have been subjected to such behavior, or other students who observe or are told of such behavior, are encouraged and expected to make verbal and/or written reports to the principal, Superintendent, and/or designated school personnel in accordance with the training and guidelines provided and the relevant provisions of the District's Code of Conduct.

Any person with knowledge of harassment, hazing, and/or bullying by a student, District employee, or third party related to the District should report the complaint to a District staff member, who will immediately report it to a DASA Coordinator, a principal, building administrator, or Title IX coordinator as soon as possible after the incident so that it may be effectively investigated and resolved.

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All District staff, when aware of harassment, bullying and/or discrimination, are required to orally report the incident(s) within one school day to the Dignity Act Coordinator, principal, Superintendent or his/her designee and report it in writing within two (2) school days after making an oral report. Any school employee who witnesses sexual harassment or what might be considered sexual harassment or otherwise becomes aware of potential sexual harassment must immediately notify the Dignity Act Coordinator and/or the Title IX Coordinator.

In order to assist investigators, reporting individuals should document the discrimination, harassment, hazing, and/or bullying as soon as it occurs and with as much detail as possible, including: the nature of the incident(s); dates, times, and places it has occurred; name of perpetrator(s); witnesses to the incident(s); and the victim's response to the incident.

A report of harassment, bullying, and/or discrimination may include, but is not limited to, the following examples:

- a report regarding the denial of access to school facilities including, but not limited to, restrooms, changing rooms, locker rooms, and/or field trips, based on

a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex;

a report regarding application of a dress code, specific grooming or appearance standards that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex;

a report regarding the use of name(s) and pronoun(s) or the pronunciation of name(s) that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or

a report regarding any other form of harassment, bullying, and/or discrimination, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex.

#### Confidentiality

It is District policy to respect the privacy of all parties and witnesses to complaints of discrimination, harassment, hazing, and/or bullying. To the extent possible, the District will not release the details of a complaint or the identity of the complainant or the individual(s) against whom the complaint is filed to any third parties who do not need to know such information. However, because an individual's need for confidentiality must be balanced with the District's legal obligation to provide due process to the accused, to conduct a thorough investigation, or to take necessary action to resolve the complaint, the District retains the right to disclose the identity of parties and witnesses to complaints in appropriate circumstances to individuals with a need to know. The staff

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member responsible for investigating complaints will discuss confidentiality standards and concerns with all complainants.

If a complainant requests that his/her name not be revealed to the individual(s) against whom a complaint is filed, the staff member responsible for conducting the investigation shall inform the complainant that:

1. the request may limit the District's ability to respond to his/her complaint;
2. District policy and applicable law prohibit retaliation against complainants and witnesses;
3. the District will not tolerate any retaliation against complainants and witnesses; and
4. the District will take strong responsive action if retaliation occurs.

If the complainant still requests confidentiality after being given the notice above, the investigator will take all reasonable steps to investigate and respond to the complaint consistent with the request, as long as doing so does not preclude the District from responding effectively to the harassment, hazing, and/or bullying and preventing the harassment, hazing, and/or bullying of other students or employees.

Investigation and Resolution Procedure of Complaints of Discrimination, Harassment, Hazing, and Bullying

#### A. Initial (Building-Level) Procedure

##### Preliminary Review

Whenever a complaint of harassment (other than sexual harassment), hazing, and/or bullying is received, whether verbal or written, it will be subject to a preliminary review and investigation. Except in the case of severe or criminal conduct, the DASA Coordinator for the building should make all reasonable efforts to resolve complaints at the building level. The goal of building-level procedures is to end the discrimination, harassment, hazing, and/or bullying and obtain a prompt and equitable resolution to a complaint.

The DASA Coordinator, or a designee, will promptly inform the Title IX Coordinator of any reports of suspected sexual harassment, including sexual assault or other serious behaviors that may fall within the scope of the Formal Title IX Complaint Policy.

Investigation of suspected sexual harassment will be coordinated with the Title IX Coordinator. In some instances, where a Formal Title IX Complaint has been filed but some of the allegations may potentially violate this policy, the investigation under the Formal Title IX Complaint Policy and this policy may occur simultaneously. In such cases, interviews may be conducted with two investigators, with one investigator handling questions related to the Formal Title IX Complaint and another investigator

handling questions related to violations of this policy.

If a complaint contains evidence or allegations of serious or extreme discrimination, harassment, hazing, or bullying, the complaint shall be referred promptly to the

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Superintendent. In addition, where the principal, building administrator, or Title IX coordinator has a reasonable suspicion that the alleged discrimination, harassment, hazing, or bullying incident involves criminal activity, he/she should immediately notify the Superintendent, who shall then contact the school attorney and appropriate child protection and law enforcement authorities. Where criminal activity is alleged or suspected by a District employee, the accused employee shall be suspended or placed on administrative leave pending the outcome of the investigation, consistent with all contractual or statutory requirements.

#### Informal Resolution

Where appropriate, informal methods may be used to resolve the complaint, including but not limited to:

- discussion with the accused, informing him or her of the District's policies and indicating that the behavior must stop;
- suggesting counseling and/or sensitivity training;
- conducting training for the department or school in which the behavior occurred, calling attention to the consequences of engaging in such behavior;
- mediation;
- requesting a letter of apology to the victim;
- writing letters of caution or reprimand; and/or
- separating the parties.

#### Parental Participation

Generally, parents of student victims and accused students should be notified within one school day of allegations that are serious or involve repeated conduct. Also, generally, the parents of students who file complaints should be allowed to participate at each stage of both informal and formal investigation and resolution procedures.

However, in certain circumstances, disclosure to the persons in parental relation of the basis for which a student is harassed, bullied and/or discriminated against may result in additional negative consequences to the student's health and well-being. Prior to notification of any person in parental relation regarding an incident of harassment, bullying and/or discrimination, school authorities must consider notification as they would any other educationally-relevant decision, taking into account the health, well-being, and safety of students involved in the incident.

The school District may seek counsel from the school attorney to determine the best course of action. In some cases, such as where a student is being targeted with anti-gay language, if there is reason to fear that that student may face negative consequences by notifying his/her persons in parental relation, regardless of how she/he actually identifies, this should be taken into account.

#### The Investigation

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As soon as possible, but no later than two (2) working days following receipt of a complaint, the DASA Coordinator for the building, or a designee, should begin an investigation of the complaint. All persons involved in an investigation (complainants, witnesses and alleged accused) will be accorded due process to protect their rights to a fair and impartial investigation. This investigation shall be prompt and thorough, and shall be completed as soon as possible.

The investigation will proceed according to the following steps:

- Interview the victim and document the conversation. Instruct the victim to have no contact or communication regarding the complaint with the alleged accused. Ask the victim specifically what action he/she wants taken in order to resolve the complaint. Refer the victim, as appropriate, to school social workers, school psychologists, crisis team managers, other school staff, or appropriate outside agencies for counseling services. Determine whether other measures should be recommended to assure safe school environment.
- Review any written documentation of the harassment prepared by the victim. If the victim has not prepared written documentation, ask the victim to do so, providing alternative formats for individuals with disabilities and young children, who have difficulty writing and need accommodation. If the complainant refuses to complete a complaint form or written documentation, the building principal or Title IX Coordinator may complete a complaint form based on the verbal report.
- Request, review, obtain and preserve relevant evidence (e.g., documents,

emails, text messages, social media communications, phone records, etc.), if any exists.

- Interview the alleged accused regarding the complaint and inform the alleged accused that if the objectionable conduct has occurred, it must cease immediately. Document the conversation. Provide the alleged accused an opportunity to respond to the charges in writing.
- Instruct the alleged accused to have no contact or communication regarding the complaint with the victim and to not retaliate against the victim. Warn the alleged accused that if he/she makes contact with or retaliates against the victim, he/she will be subject to immediate disciplinary action.
- Interview any witnesses to the complaint. Caution each witness to keep the complaint and his/her participation in the investigation confidential. Employees may be required to cooperate as needed in investigations of suspected sexual harassment, in a manner that is consistent with any applicable collective bargaining agreement.
- Review all documentation and information relevant to the complaint.
- If either the target or the accused is a disabled student receiving special education services under an IEP or section 504/Americans with Disabilities Act accommodations, the committee on special education may be consulted to determine the degree to which the student's disability either caused or is affected by the discrimination or policy violation. In addition, due process procedures required for persons with disabilities under state and federal law shall be followed.

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#### Determination of Materiality

Following the investigation, the DASA Coordinator or designee must make a determination as to whether the incident is "material" (verified). The Commissioner's Regulations define a material incident of harassment, bullying and/or discrimination as a "single verified incident or a series of related verified incidents where a student is subjected to harassment, bullying and/or discrimination by a student and/or employee on school property or at a school function," including a verified incident or series of related verified incidents of harassment or bullying that occur off school property, are the subject of a written or oral complaint, and create or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property.

If the District's investigation reveals that an incident constitutes a material (verified) incident of bullying, harassment and/or discrimination, the DASA Coordinator and other school/District personnel should develop a plan to address the hostile environment and end the bullying. This can occur through a variety of methods, including education, counseling of the victim and the aggressor (separately), implementing restorative practices, behavior contracts, disciplinary proceedings up to and including suspension, and, if necessary, the involvement of law enforcement. Other staff may be included to help develop the plan with the Dignity Act Coordinator and leaders within the school. Appropriate staff and students should be made aware of the plan, so that it can be reinforced and applied with consistency.

The person(s) in parental relation of both the victim and the aggressor should be contacted about the plan, in accordance with District policies (and applicable state and federal laws and regulations) concerning student confidentiality and privacy. As a part of the plan, school/District personnel should also advise the victim of the incident of steps to take, and whom to contact, if the bullying, harassment, and/or discriminatory behavior continues to occur.

#### Written Report

The investigator must create a written report of the investigation, kept in a secure and confidential location, containing:

- A list of all documentation and other evidence reviewed, along with a detailed summary;
- A list of names of those interviewed along with a detailed summary of their statements;
- A timeline of events;
- A summary of prior relevant incidents, reported or unreported;
- A determination, based on a preponderance of the evidence, as to whether each incident of alleged conduct did or did not occur; and
- The final resolution of the complaint, together with any corrective action(s).

Notice of Outcome

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The investigator shall report back to both the victim and the accused, and their parents or guardians (when appropriate), notifying them in writing, and also in person as appropriate regarding the outcome of the investigation and the action taken to resolve the complaint. Parent(s) and guardian(s) will also receive the notification. The investigator shall instruct the target to report immediately if the objectionable behavior occurs again or if the alleged harasser retaliates against him/her.

The investigator shall notify the victim that if he/she desires further investigation and action, he/she may request a District level investigation by contacting the Superintendent. The investigator shall also notify the victim of his/her right to contact the U.S. Department of Education's Office for Civil Rights and/or a private attorney.

If the initial investigation results in a determination that discrimination, harassment, bullying, or hazing did occur, the investigator will promptly notify the building principal (for accused students) or supervisor (for accused employees), who shall then determine whether discipline should be imposed in accordance with the Code of Conduct, District policy, the applicable collective bargaining agreement, or state law. In accordance with a progressive model of discipline embodied in the Code of Conduct, student offenders shall further be advised that their behavior must improve. Student offenders will receive in-school guidance on making positive choices in their relationships with others.

If the investigator determines that harassment, bullying, or discrimination occurred, the District will document:

- The plan developed to address the hostile environment and end the harassment, bullying, or discrimination,
- Any action taken to end the harassment, bullying, or discrimination (including any disciplinary actions taken against an aggressor),
- A schedule for monitoring the situation, in order to ensure the plan is working, and
- A plan to follow-up with the victim at regular intervals, in order to determine if the harassment, bullying, or discrimination has resumed.

Request for District-Level Procedure

Any party who is not satisfied with the outcome of the initial investigation by the DASA Coordinator, or designee, may request a District-level investigation by submitting a written complaint to the Superintendent within thirty (30) days. The building principal or Title IX Coordinator (i.e., the investigator) shall promptly submit a copy of all building-level investigation and interview documentation to the Superintendent, following the receipt of any request for a District-level investigation.

B. District-Level Procedure

The Superintendent shall promptly investigate and resolve all discrimination, harassment, hazing, and bullying complaints that are referred to him/her, as well as those appealed to the Superintendent following an initial investigation by a DASA

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Coordinator or designee. In the event the complaint involves the Superintendent, the complaint shall be filed with or referred to the Board of Education (the Board) president, who shall refer the complaint to an appropriate individual for investigation.

The District-level investigation should begin as soon as possible, but not later than three (3) working days following receipt of the complaint by the Superintendent or Board president.

In conducting the formal District-level investigation, the District will use individuals who have received formal training regarding such investigations or who have previous experience investigating such complaints.

If a District investigation results in a determination that discrimination, harassment, hazing, or bullying did occur, prompt corrective action will be taken to end the misbehavior. Where appropriate, District investigators may suggest mediation as a means of exploring options of corrective action and informally resolving the complaint.

If there is a determination that harassment, bullying, or discrimination occurred, the District will document:

- The plan developed to address the hostile environment and end the harassment, bullying, or discrimination,
- Any action taken to end the harassment, bullying, or discrimination (including any disciplinary actions taken against an aggressor),
- A schedule for monitoring the situation, in order to ensure the plan is working, and
- A plan to follow-up with the victim at regular intervals, in order to determine if the harassment, bullying, or discrimination has resumed.

No later than thirty (30) days following receipt of the complaint, the Superintendent (or, in cases involving the Superintendent, the Board-appointed investigator) will notify the victim and alleged perpetrator, in writing, of the outcome of the investigation. If additional time is needed to complete the investigation or take appropriate action, the Superintendent or Board-appointed investigator will provide all parties with a written status report within thirty days (3) following receipt of the complaint.

The target and the alleged harasser have the right to be represented by a person of their choice, at their own expense, during District-level investigations and hearings.

#### Discipline/Penalties

Any individual who violates this policy by engaging in prohibited discrimination, harassment, hazing, or bullying will be subject to appropriate disciplinary action.

Disciplinary measures available to school authorities include, but are not limited to, the following:

**Students:** Discipline may range from a reprimand, up to and including suspension from school, to be imposed consistent with the student conduct and

15 discipline policy and applicable law. The response to a student's violations of the policy shall be age-appropriate and include both consequences and appropriate remedial responses. Consequences shall be unique to the individual incident and shall vary in method and severity according to the nature of the behavior, the developmental age of the student, the student's previous disciplinary record, other extenuating circumstances, and must be consistent with the Code of Conduct.

**Employees:** Discipline may range from a warning, up to and including termination, to be imposed consistent with all applicable contractual and statutory rights. The discipline must follow all applicable school and/or District policies and procedures, including contractual provisions and due process obligations related to staff-to-student misconduct.

**Volunteers:** Penalties may range from a warning, up to and including loss of volunteer assignment.

**Vendors:** Penalties may range from a warning, up to and including loss of District business.

**Other individuals:** Penalties may range from a warning, up to and including denial of future access to school property.

#### Education

All students shall be informed of this policy in student handbooks and student registration materials. A poster summarizing the policy shall also be posted in a prominent location at each District building.

Administrative employees who have specific responsibilities for investigating and resolving complaints of harassment, hazing, and bullying shall receive yearly training on this policy, regulation, and related legal developments.

Principals/supervisors in each school shall be responsible for informing students and staff on a yearly basis of the terms of this policy, including the procedures for reporting a complaint and the impact of harassment, hazing, and bullying on the victim and the bystander.

#### External Remedies

Victims may have the right to file complaints with the U.S. Department of Education's Office for Civil Rights (OCR) and the New York State Division of Human Rights (DHR). The OCR can be contacted at (800) 421-3481, 400 Maryland Avenue SW, Washington, DC 20202-1100, or at <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>. The DHR can be contacted at (888) 392-3644, [www.dhr.ny.gov/complaint](http://www.dhr.ny.gov/complaint), or at 1 Fordham Plaza, Fourth Floor, Bronx, NY 10458.

Nothing in these regulations shall be construed to limit the right of the complainant to file a lawsuit in either state or federal court, or to contact law enforcement officials if the

16 sexual harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, which may constitute a crime. No District contract or collective bargaining agreement entered into after July 11, 2018 may include a binding arbitration clause for sexual harassment requiring arbitration before bringing a sexual harassment claim to a court.

#### Retaliation Prohibited

Any act of retaliation against any person who opposes discrimination, harassment, bullying, or hazing, or who has filed a complaint in good faith, is prohibited and illegal, and therefore subject to disciplinary action. Likewise, retaliation against any

person who has, in good faith, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of a discrimination, harassment, bullying, or hazing complaint is prohibited.

For purposes of this policy, retaliation includes but is not limited to: verbal or physical threats, intimidation, ridicule, bribes, destruction of property, spreading rumors, stalking, harassing phone calls, discipline, discrimination, demotion, denial of privileges, any action that would keep a reasonable person from coming forward to make or support a discrimination, harassment, bullying or hazing claim. Any person who retaliates is subject to immediate disciplinary action, up to and including suspension or termination.

#### Dissemination, Monitoring, Review, and Reporting

All students shall be informed of this policy in student handbooks, on the District website, and in student registration materials. A poster summarizing the policy shall also be posted in a prominent location at each school. All secondary school student body officers shall receive District training about the policy at the beginning of each school year.

Each year, as a part of the required annual review of the Code of Conduct, this policy may be reviewed to assess its effectiveness and compliance with state and federal law. If changes are needed, the proposed policy revisions could be recommended to the board for its consideration.

In addition to tracking harassment, bullying and/or discrimination incidents for purposes of District-wide analysis and annual statewide reporting, building principals will report incident data to the Superintendent periodically throughout the school year, on a schedule to be determined by the Superintendent.

The board shall receive the annual Violent and Disruptive Incident Report (VADIR), as well as other relevant data, for each school and for the District as a whole, with particular attention to the trends in incidents of harassment, bullying and/or discrimination. Based on the review of the data, the board may consider further action, including but not limited to modification of this policy and additional training.

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Districts must ensure that they report such information to the public in a manner that complies with student privacy rights under the Family Educational Rights and Privacy Act (FERPA).

#### Training

Age-appropriate curricular materials will be made available so that it can be incorporated in instruction K-12 to ensure that all students are educated to recognize and report discrimination, harassment, bullying, and hazing.

All new employees shall receive copies of and training on this policy and regulation at new employee orientation or as soon as possible after starting their job. All other employees shall be provided with copies of this policy and regulation and training regarding this policy at least once a year in furtherance of the District's commitment to a harassment-free learning environment.

Training opportunities shall be provided to all employees, including, but not limited to teachers, administrators, monitors, aides, bus drivers, coaches, custodians, cafeteria staff, and hall monitors. Such training shall:

- Raise awareness and sensitivity to potential acts of harassment, bullying and discrimination directed at students.
- Address the social patterns of harassment, bullying and discrimination, the identification and mitigation of such acts, and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings.
- Enable employees to prevent and respond to incidents of harassment, bullying and/or discrimination.
- Make school employees aware of the effects of harassment, bullying, cyberbullying, and/or discrimination of students.
- Ensure the effective implementation of school policy on school conduct and discipline
- Include safe and supportive school climate concepts in curriculum and classroom management.

In compliance with Education Law §13(3), the DASA Coordinator at every school must be thoroughly trained in human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes a person's actual or perceived sex, and gender identity and expression), and sex. The DASA Coordinator must be licensed and/or certified by

the Commissioner as a classroom teacher, school counselor, school psychologist, school nurse, school social worker, school administrator or supervisor, or Superintendent of schools.

Building principals, the Title IX Coordinator, and other administrative employees who have specific responsibilities for investigating and resolving complaints shall receive 18

yearly training on their responsibilities pursuant to this policy and regulation and related legal developments. Additionally, building principals in each school and program directors shall be responsible for informing students and staff on a yearly basis of the terms of this policy, including the procedures established for investigation and resolution of complaints, general issues surrounding discrimination, harassment, bullying, and hazing, the rights and responsibilities of students and employees, and the impacts on the victim.