



<b>Book Section</b>	<b>Southern Lehigh School District 100 Programs</b>
<b>Title</b>	<b>Equal Employment Opportunity and Anti-Discrimination/ Sexual Harassment Policy</b>
<b>Code</b>	<b>104</b>
<b>Status</b>	<b>Active</b>
<b>Adopted</b>	<b>October 11, 2021</b>
<b>Last Reviewed/Revised</b>	<b>1<sup>st</sup> Reading September 27, 2021</b>

## **Article I. Prohibition of Unlawful Discrimination, Retaliation and Harassment.**

§1.1 The School District is an equal opportunity employer and complies with all Applicable Law. The School District is committed to providing a workplace that is free from unlawful discrimination, retaliation, and harassment. [1][2][3][4][5][6][7][8][9][10][11][12]

§1.2 The School District strictly prohibits and does not tolerate unlawful discrimination, retaliation or harassment against employees, applicants, or any other covered persons by co-workers, supervisors, managers, or third parties on the basis of a person's:

§1.2.1 Race;

§1.2.2 Color;

§1.2.3 Age (40 or older);

§1.2.4 Religious creed, which includes religious belief, observance and practice, and dress or grooming practices;

§1.2.5 National origin;

§1.2.6 Ancestry;

§1.2.7 Physical disability;

§1.2.8 Mental disability;

§1.2.9 Genetic information, including information about:

§1.2.9.1 an individual's genetic tests;

§1.2.9.2 family members' genetic tests;

§1.2.9.3 family members' diseases or disorders;

**§1.2.9.4** an individual's or family member's receipt of, or request for, genetic services; and

**§1.2.9.5** participation by an individual or their family member in clinical research that includes genetic services.

**§1.2.10** Sex, including:

§1.2.10.1 pregnancy;

§1.2.10.2 childbirth;

**§1.2.10.3** breastfeeding or medical conditions related to breast-feeding;

and **§1.2.10.4** medical conditions related to pregnancy or childbirth;

**§1.2.11** Gender;

**§1.2.12** Gender expression, meaning a person's gender-related appearance or behavior, whether or not stereotypically associated with the person's sex at birth;

**§1.2.13** Gender identity, meaning a person's identification as male, female, a gender different from the person's sex at birth, or transgender;

**§1.2.14** Sexual orientation, including heterosexuality, homosexuality, and bisexuality;

**§1.2.15** Military or veteran status, including past, current or prospective service in the uniformed services; or

**§1.2.16** any other characteristic protected under Applicable Law.

**§1.3** The School District also prohibits and does not tolerate unlawful discrimination against employees and covered persons who are perceived to have any of these characteristics or who associate with a person who has, or is perceived to have, any of these characteristics.

**§1.4** All School District employees, officials, agents, workers, representatives, students, parents, guardians, volunteers, vendors, visitors and other third parties are prohibited from engaging in unlawful discrimination, retaliation, and harassment as those terms are defined in Applicable Law.

**§1.5** This Policy applies to all terms and conditions of employment, including hiring, training, promotion, discipline, compensation, benefits, and termination of employment.

**§1.6** The School District complies with and directs its employees, officials, agents, workers and representatives to comply with Applicable Law, including:

§1.6.1 the Age Discrimination in Employment Act; [1]

§1.6.2 the Equal Pay Act; [2]

§1.6.3 the Older Workers' Benefit Protection Act;

§1.6.4 the Pennsylvania Human Relations Act;

§1.6.5 the Rehabilitation Act of 1974;

§1.6.6 Title IX of the Education Amendments of 1972;

§1.6.7 Titles IV, VI and VII of the Civil Rights Act of 1964;

§1.6.8 Sections 1981, 1983, 1985 and 1988;

§1.6.9 the Americans with Disabilities Act;

§1.6.10 the Genetic Information Nondiscrimination Act of 2008;

§1.6.11 the Whistleblower Act;

§1.6.12 discrimination, retaliation, and harassment protections under the United States Constitution; and

§1.6.13 discrimination, retaliation, and harassment protections under the Pennsylvania Constitution.

§1.7 As Required by Law:

§1.7.1 the School District will reasonably accommodate qualified individuals with a disability if such accommodation would allow the individual to perform the essential functions of the job, unless doing so would create an undue hardship;

§1.7.2 the School District will also provide reasonable accommodations for an employee's religious beliefs or practices as Required by Applicable Law; and

§1.7.3 the School District will provide other accommodations that may be Required by Applicable Law.

§1.8 The School District is committed to enforcing this Equal Employment Opportunity and Anti-Discrimination and Harassment Policy.

## **Article II. Designation and Duties of Compliance Officers and Coordinators.**

**§2.1** The Director of Human Resources is responsible for the administration of this Policy.

**§2.2** The Director of Human Resources shall be the Compliance Officer or Coordinator under all anti-discrimination laws. Without limiting the generality of the foregoing, the Director of Human Resources is and shall be:

**§2.2.1** the Americans with Disabilities Act Coordinator (“The ADA Coordinator”);

[<sup>3</sup> **§2.2.2** the Title IX Coordinator;

**§2.2.3** the Section 504 Coordinator<sup>s</sup>; and

**§2.2.4** the Equal Employment Opportunity Coordinator.

**§2.3** The Director of Human Resources shall:

**§2.3.1** ensure compliance with this Policy and Applicable Law regarding unlawful discrimination, retaliation, and harassment in the workplace, including:

**§2.3.1.1** ensuring that all notices and posting are made as required herein;

**§2.3.1.2** imposing discipline, after implementing required process, when it is determined that this Policy or Applicable Law has been violated;

**§2.3.1.3** appointing investigators either on a permanent basis or an ad-hoc basis;

**§2.3.1.4** appointing decision-makings either on a permanent basis or an ad-hoc basis; and

**§2.3.1.5** appointing facilitators of informal resolution processes either on a permanent basis or an ad-hoc basis;

**§2.3.2** ensure training is provided to all staff and the School Board regarding the prohibition of unlawful discrimination, retaliation, and harassment in the workplace;

**§2.3.3** ensure that specialized training is provided when required by Applicable Law, including training: (a) for investigators, decision-makers, and any persons who facilitates an informal resolution process; and (b) for the Director of Human Resources;

**§2.3.4** preserve all records used for purposes of training; and

**§2.3.5** promulgate and adopt such reasonable and necessary Administrative Regulations to implement this Policy.

**§2.4** The contact information for the Director of Human Resources is and shall be as follows:

Director of Human Resources  
Southern Lehigh School District  
5775 Main Street, Center Valley, PA 18034  
Phone: 610.282.3121  
Email: farrism@sbsd.org

**§2.5** The contact information for the Director of Human Resources as stated in **§2.4** hereof shall be changed without the necessity of further action by the School Board upon any changes to the information stated.

### **Article III. Notice of Policy.**

**§3.1** The School Board directs that notice of this Policy shall be provided in the following ways and in accordance with the following terms and conditions:

**§3.1.1** the substance of this Policy shall be included in each employee handbook;

**§3.1.2** this policy and related attachments shall be posted to the School District's website; and

**§3.1.3** a notice stating that the School District does not engage in unlawful discrimination, harassment, or retaliation, including Title IX Sexual Harassment, in any School District education program or activity, is to be issued to all students, parents/guardians, employment applicants, employees and all unions holding collective bargaining agreements with the School District.

**§3.1.4** All discrimination notices and information shall include the title, office address, telephone number and email address of the individual(s) designated as the Compliance Officer(s) and Coordinator(s), including the Title IX Coordinator.

### **Article IV. Complaint Procedure.**

**§4.1** Any employee who has been subjected to any conduct that s/he believes violates this policy, or witnesses any such conduct, should promptly report the conduct, orally or in writing. Employees may speak to, write to, or otherwise contact any of the following resources:

**§4.1.1** her/his direct supervisor or, if the conduct involves her/his direct supervisor, the next level above her/his direct supervisor;

**§4.1.2** the Director of Human Resources;

**§4.1.3** the Superintendent or Assistant Superintendent;

§4.1.4 any Supervisor level employee; or

§4.1.5 the School District's complaint hotline.

§4.2 Although not mandatory, a Complaint Form shall be available on the School District's website, at the office of each school and at the Human Resources office of the School District. Complaints should be as detailed as possible, including the names of all individuals involved and any witnesses.

§4.3 The Director of Human Resources is responsible for creating and maintaining Complaint Forms that may be accessed on the School District's website or in the main office of each school and at the Human Relations Office of the School District.

#### **Article V. Investigations and Decisions.**

§5.1 The School District will ensure that a fair, timely, and thorough investigation is conducted by qualified personnel in an impartial manner that provides all Parties with appropriate process Required by Law and reaches reasonable conclusions based on the evidence collected.

§5.2 The School District presumes, and requires its employees, officials and agents implementing this Policy to presume, that any Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made after or at the conclusion of any process Required by Law.

§5.3 At all times, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the School District.

§5.4 In all instances, decisions shall be made impartially:

§5.4.1 based upon a preponderance of the evidence;

§5.4.2 only after an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence;

§5.4.3 with credibility determinations no based on a person's status as a complainant, respondent, or witness.

§5.5 No person acting as the investigator, decision-maker, facilitator, Coordinator or Compliance Officer shall participate in any matter under this Policy if:

§5.5.1 he/she has a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent; or

§5.5.2 he/she has not been trained as Required by Law.

§5.6 No School District official, employee or agent shall 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.

**§5.7** The School District will maintain appropriate documentation and tracking to ensure reasonable progress is made. At the close of the investigation, School District will consider appropriate options for remedial actions and resolutions. If misconduct is found, School District shall take prompt and effective, corrective action, as appropriate.

**§5.8** The School District will maintain confidentiality to the extent Required by Law and/or reasonably possible. Without limiting the generality of the foregoing, the following terms and conditions apply:

**§5.8.1** When proceeding under **Article VI** hereof, the School 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 School District to provide the supportive measures. [13][14][15][16][17]

**§5.9** The Complainant and Respondents will be informed of the results of the investigation as Required by Law.

## **Article VI. Special Rules Applicable to Sexual Harassment.**

**§6.1** Notwithstanding anything in this Policy to the contrary, in addition to any terms and conditions of this Policy that apply generally, the terms and conditions contained in this **Article VI** shall also apply to matters of Sexual Harassment,

**§6.1.1** whenever the School District has actual knowledge of Sexual Harassment

**§6.1.2** whenever a formal complaint of Sexual Harassment is filed; or

**§6.1.3** before disciplinary sanctions or other actions that are not supportive measures as defined in 34 CFR §106.30 are imposed for Sexual Harassment.

**§6.2** All School District employees, officials, agents, workers, representatives, students, parents, guardians, volunteers, vendors, visitors and other third parties are prohibited from engaging in Sexual Harassment of employees and other covered persons based on that individual's sex (including pregnancy, sex assigned at birth, sexual orientation, gender identity, gender expression, gender transition or transgender identity) or gender and regardless of the harasser's sex or gender.

**§6.3** "Sexual Harassment" includes the meaning as stated in 34 C.F.R. §106.30(a) and in Applicable Law. Without limiting the generality of the foregoing, "Sexual Harassment" means conduct on the basis of sex that satisfies one or more of the following:

**§6.3.1** An employee or official 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;

**§6.3.2** 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

**§6.3.3** "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

**§6.4** "Sexual Harassment" may include any harassment based on someone's sex or gender, including harassment that is not sexual in nature (for example, offensive remarks about an individual's sex or gender), as well as any unwelcome sexual advances or requests for sexual favors or any other conduct of a sexual nature, when any of the following is true.

**§6.4.1** Submission to the advance, request, or conduct is made either explicitly or implicitly a term or condition of employment;

**§6.4.2** Submission to or rejection of the advance, request, or conduct is used as a basis for employment decisions; or

**§6.4.3** Such advances, requests, or conduct have the purpose or effect of substantially or unreasonably interfering with an employee's work performance by creating an intimidating, hostile, or offensive work environment.

**§6.5** The School District will not tolerate any form of Sexual Harassment, regardless of whether it is:

**§6.5.1** Verbal (for example, epithets, derogatory statements, slurs, sexually-related comments, or jokes, unwelcome sexual advances, or requests for sexual favors);

**§6.5.2** Physical (for example, assault or inappropriate physical contact);

**§6.5.3** Visual (for example, displaying sexually suggestive posters cartoons or drawings, sending inappropriate adult-themed gifts, leering or making sexual gestures); or

**§6.5.4** Online (for example, derogatory statements or sexually suggestive postings in any social media platform including Facebook, Twitter, Instagram, Snapchat, etc.).

**§6.5.5** This list contained in this **§6.5** is illustrative only, and not exhaustive. No form of sexual harassment will be tolerated.



**§6.6** Even where conduct may not meet the legal definition of constituting Sexual Harassment, conduct that may be inappropriate otherwise and not legally protected will lead to possible discipline, including discharge.

**§6.7** When the terms and conditions of this **Article VI** apply, the School District shall comply with 34 CFR, Chapter 106, including 34 CFR §§106.44 and 106.45. During such time that the mandatory processes under 34 CFR, Chapter 106 apply, the School District shall suspend other procedures and processes to the extent Required by Law.

**§6.8** The following general terms and conditions apply to matters of Sexual Harassment:

**§6.8.1** The terms and conditions of this **Article VI** apply equally to both Complainants and Respondents.

**§6.8.2** The Parties are to be treated equitably by providing remedies to a Complainant where a determination of responsibility for sexual harassment has been made against the Respondent, and by following the grievance process that complies with 34 CFR §106.45 before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures against the Respondent.

**§6.8.3** No Party shall be restricted in his/her ability to discuss the allegations under investigation or to gather and present relevant evidence.

**§6.8.4** Each Party shall have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

**§6.8.5** Each Party shall have the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.

**§6.8.6** Neither Party shall be limited in his/her choice or presence of advisor in any meeting or grievance proceeding; however, the School District representative or counsel retains the right to establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

**§6.8.7** Remedies must be designed to restore or preserve equal access to the School District's education program or activity; and such remedies may include Supportive Measures;" however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

**§6.9** *Filing of a Formal Complaint.* A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under 34 CFR §106.8(a).

**§6.10** *The Grievance Process; Time Frames; Notices; the Investigation; and the Determination.*  
The Director of Human Resources shall ensure that any grievance process governed by 34 CFR §106.45 shall be concluded reasonably promptly, subject to the following terms and conditions:

**§6.10.1** All persons over whom the School District has jurisdiction, including employees and students, shall cooperate and comply with the procedures and processes stated herein, including:

**§6.10.1.1** attending meetings upon request;

**§6.10.1.2** answering questions with truthful answers; and

**§6.10.1.3** otherwise cooperating with the School District.

**§6.10.2** Within three (3) business days of the School District's receipt of a formal complaint, the Director of Human Resources shall provide written notice to known Parties of the following:

**§6.10.2.1** Notice of the School District's grievance process and informal resolution process;

**§6.10.2.2** Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in 34 CFR §106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview;

**§6.10.2.2.1** Sufficient details include the identities of the Parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under 34 CFR §106.30, and the date and location of the alleged incident, if known;

**§6.10.2.3** A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;

**§6.10.2.4** Notice that the Parties may have an advisor of their choice, who may be, but is not required to be, an attorney;

**§6.10.2.5** Notice that the Parties may inspect and review evidence under paragraph 34 CFR §106.45(b)(5)(vi);

**§6.10.2.6** Notice of the School District's Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process;

**§6.10.2.7** Notice of the name and contact information of the appointed investigator; and

**§6.10.2.8** Notice of the right to object to the appointed investigator on the basis of an alleged conflict of interest or other basis to disqualify the appointed investigator in accordance with law.

**§6.10.3** When the Director of Human Resources appoints an investigator, the Director of Human Resources may establish a reasonably prompt due date for the completion of the investigation by the investigator after considering the nature and scope of the allegations made.

**§6.10.3.1** The assigned investigator shall make reasonable efforts to complete the investigation by the date due, if any, but may ask the Director of Human Resources for more time when reasonably necessary.

**§6.10.4** The assigned investigator shall and is hereby given the authority to:

**§6.10.4.1** engage in a reasonable investigation utilizing such investigative techniques as reasonably necessary and appropriate under the circumstances;

**§6.10.4.2** grant delays or extensions when necessary, including for cause in accordance with **§6.10.12** hereof.

**§6.10.4.3** provide both Parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint;

**§6.10.4.4** fairly safeguard evidence that is obtained or developed during the course of the investigation utilizing School District systems and procedures;

**§6.10.4.5** prior to completion of the investigative report,

**§6.10.4.5.1** send to each Party and the Party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy;

**§6.10.4.5.2** give to the parties at least ten (10) days to submit a written response;

**§6.10.4.5.3** consider the written responses, if any, provided by the Parties prior to preparing the investigative report;

**§6.10.4.6** After considering written responses by the Parties, if any, prepare an investigative report that:

**§6.10.4.6.1** fairly summarizes relevant evidence; and

**§6.10.4.6.2** contains notice to the Parties that they have the right to file a written response to the investigative report within ten (10) days of receipt of the investigative report;

**§6.10.4.7** at least ten (10) days prior the date that a determination is made regarding responsibility, send the investigative report in an electronic format or a hard copy to:

**§6.10.4.7.1** each Party and the Party's advisor, if any; and

**§6.10.4.7.2** the Director of Human Resources.

**§6.10.5** Promptly upon receipt of the investigative report, the Director of Human Resources shall:

**§6.10.5.1** appoint a decision-maker; and

**§6.10.5.2** give notice to the Parties, and their advisors, if any:

**§6.10.5.2.1** of the name and contact information of the decision-maker; and

**§6.10.5.2.2** the right to submit written, relevant questions that the Party wants asked of any Party or witness.

**§6.10.6** The assigned decision-maker shall and is hereby given the authority to:

**§6.10.6.1** afford each Party the opportunity to submit written, relevant questions that a party wants asked of any Party or witness;

**§6.10.6.2** provide each Party with the answers;

**§6.10.6.3** allow for additional, limited follow-up questions by each Party;

**§6.10.6.4** not permit questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent;

**§6.10.6.5** explain to the Party proposing any questions any decision to exclude a question as not relevant;

**§6.10.6.6** grant delays or extensions when necessary, including for cause in accordance with **§6.10.12** hereof;

**§6.10.6.7** applying a preponderance of the evidence standard with the burden of proof being on the School District, issue a written determination regarding responsibility that includes the following:

**§6.10.6.7.1** identification of the allegations potentially constituting Sexual Harassment;

**§6.10.6.7.2** 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, methods used to gather other evidence, and hearings held, if any;

**§6.10.6.7.3** findings of fact supporting the determination;

**§6.10.6.7.4** conclusions regarding the application of the School District's Code of Conduct to the facts;

**§6.10.6.7.5** a statement of, and rationale for, the result 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 School District's education program or activity will be provided by the School District to the Complainant; and

**§6.10.6.7.6** the School District's procedures and permissible bases for the Complainant and Respondent to appeal.

**§6.10.6.8** The decision-maker shall provide the determination to the Parties and the Director of Human Resources simultaneously.

**§6.10.7** Promptly upon receipt of the determination, the Director of Human Resources shall provide notice to the Parties that contains:

**§6.10.7.1** an explanation of when the decision becomes final;

**§6.10.7.2** notice of the availability of an appeal process from a determination regarding responsibility, and from a recipient's dismissal of a Formal Complaint or any allegations therein, on the following bases:

**§6.10.7.2.1** procedural irregularity that affected the outcome of the matter;

**§6.10.7.2.2** 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;

**§6.10.7.2.3** the Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter;

**§6.10.7.2.4** any findings of fact were not supported by substantial evidence; or

**§6.10.7.2.5** the determination is in violation of the constitutional rights of the Party or is not in accordance with law; and

**§6.10.7.3** notice that an appeal must be filed within ten (10) days of the Party's receipt of the determination;

**§6.10.8** If no appeal is timely filed, the Director of Human Resources shall promptly notify the Parties and the Superintendent of the decision.

**§6.10.9** If an appeal is filed, the Director of Human Resources shall promptly:

**§6.10.9.1** appoint an appellate decision-maker; and

**§6.10.9.2** give notice simultaneously to the Parties, and their advisors, if any:

**§6.10.9.2.1** of the name and contact information of the appellate decision maker; and

**§6.10.9.2.2** the right to submit a written statement in support of, or challenging, the outcome.

**§6.10.10** The assigned appellate decision-maker shall and is hereby given the authority to:

**§6.10.10.1** afford each Party a reasonable and equal opportunity to submit a written statement in support of, or challenging, the outcome within ten days of receipt of the notice from the Director of Human Resources in accordance with **§6.10.9.2.2** hereof;

**§6.10.10.2** consider any written statements received;

**§6.10.10.3** grant delays or extensions when necessary, including for cause in accordance with **§6.10.12** hereof. and

**§6.10.10.4** within ten (10) days of due date for the receipt of statements, issue a written decision describing the result of the appeal and the rationale for the result.

**§6.10.10.5** The decision-maker shall provide the decision to the Parties and the Director of Human Resources simultaneously.

**§6.10.11** Any due date for the Director of Human Resources to act under this Policy shall be extended by any time that the Director of Human Resources is absent from work, provided, however, that such extension may not be any longer than an additional five (5) business days.

**§6.10.11.1** If the Director of Human Resources is absent for more than five (5) business days, the Superintendent shall ensure that the due dates are complied with during the absence.

**§6.10.11.2** If the Director of Human Resources is planning to be absent, such as for a vacation, he/she shall delegate his/her responsibilities under this Policy for the time during which he/she is absent.

**§6.10.12** *Delay for Cause.* The Director of Human Resources, an investigator and a decision-maker may allow for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the Complainant and the 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

**§6.11** *Supportive Measures.* The Supportive Measures that may be utilized by the School District are as defined in **§6.14.7** hereof.

**§6.12** *Specialized Training.* The Director of Human Resources shall ensure that training occurs that complies with the following terms and conditions:

**§6.12.1** the Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on:

**§6.12.1.1** the definition of sexual harassment in 34 CFR §106.30;

**§6.12.1.2** the scope of the School District's education program or activity,

**§6.12.1.3** how to conduct an investigation and the grievance process including hearings, appeals, and informal resolution processes, as applicable; and

**§6.12.1.4** how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

**§6.12.2** decision-makers receive training on any technology to be used at a live hearing, if any, and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in 34 CFR §106.45(b)(6);

**§6.12.3** investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in 34 CFR §106.45(b)(5)(vii); and

**§6.12.4** 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 of sexual harassment.

**§6.13** *Disciplinary Sanctions.* Upon a finding of a violation of this Policy or of any other applicable work or student rule or requirement, the School District may impose any discipline upon an employee or student within its lawful authority. For employees who have been found to be subject to discipline, the discipline may include a verbal reprimand, a written reprimand, a warning, a suspension without pay, mandatory additional or specialized training, demotion, discharge, or any combination thereof. For any student who has been found to be subject to discipline, the discipline may include any discipline referenced in the Code of Student Conduct.

**§6.14** When capitalized in this Policy, the following terms have the state meanings unless the context clearly indicates otherwise:

**§6.14.1** “Actual Knowledge” means notice of sexual harassment or allegations of sexual harassment to the School District’s Title IX Coordinator or to any employee of the School District;

**§6.14.2** “Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment, unlawful retaliation, or unlawful discrimination, as applicable;

**§6.14.3** “Formal Complaint” means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the School District investigate the allegation of sexual harassment, provided that at the time of filing a formal complaint, the complainant must be participating in or attempting to participate in the education program or activity of the School District.



§6.14.4 “Parties” means both the Complainant and the Respondent.

§6.14.5 “Party” means either the Complainant or the Respondent.

§6.14.6 “Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.”

§6.14.7 “Supportive Measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent. Such measures are designed to restore or preserve equal access to the School District’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all Parties or the School District’s educational environment, or deter sexual harassment. Supportive measures may include:

§6.14.7.1 counseling;

§6.14.7.2 extensions of deadlines or other course-related adjustments;

§6.14.7.3 modifications of work or class schedules;

§6.14.7.4 campus escort services;

§6.14.7.5 mutual restrictions on contact between the parties;

§6.14.7.6 changes in work locations;

§6.14.7.7 leaves of absence;

§6.14.7.8 increased security and monitoring of certain areas of the campus;

and §6.14.7.9 other similar measures.

## **Article VII. Employee Responsibilities.**

§7.1 School District employees must comply with all applicable provisions of this Policy and cooperate in all processes implemented under this Policy.

§7.2 School District employees must report discriminatory, retaliatory, or harassing conduct of which they become aware or that is reported to them to the Director of Human Resources.

§7.3 School District employees who observe such conduct or who receive any complaints or reports of such conduct must report the conduct, report, or complaint to the Director of Human Resources so that an investigation can be undertaken, and corrective action taken, if appropriate.

**§7.4** In the event that the Director of Human Resources:

**§7.4.1** is the alleged perpetrator of unlawful conduct under this Policy or respondent under Applicable Law, School District must report the conduct, report, or complaint to the Superintendent; and

**§7.4.2** is the alleged victim of unlawful conduct under this Policy, the Director of Human Resources and employees must report the conduct, report, or complaint to the Superintendent;

### **Article VIII. No Retaliation.**

**§8.1** No one will be subject to, and School District prohibits, any form of discipline, reprisal, intimidation or retaliation for good faith reports or complaints of incidents of discrimination, retaliation, or harassment of any kind, pursuing any discrimination, retaliation or harassment claim or cooperating in related investigations.

### **Article IX. Violations of this Policy.**

**§9.1** Any employee or official, regardless of position or title, who has been found to have subjected an individual to unlawful discrimination, retaliation, or harassment, will be subject to discipline, up to and including termination of employment or removal from office.

### **Article X. Recordkeeping.**

**§10.1** Notwithstanding anything in this or any other Policy to the contrary, the School District shall maintain for a period of at least seven (7) years records of—

**§10.1.1** Each Sexual Harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under paragraph 34 CFR §106.45(b)(6)(i), any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the Recipient's education program or activity;

**§10.1.2** Any appeal and the result therefrom;

**§10.1.3** Any informal resolution and the result therefrom; and

**§10.1.4** All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

**§10.2** The Director of Human Resources shall make its training materials regarding Sexual Harassment and provided in accordance with **Article VI** hereof publicly available on its website.

**§10.3** For each response required under 34 CFR §106.44, the Director of Human Resources shall create, and maintain for a period of seven (7) years, records of any actions, including any Supportive Measures, taken in response to a report or formal complaint of Sexual Harassment.

**§10.3.1** In each instance, the Director of Human Resources must document the basis for the conclusion that the School District's response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the School District's education program or activity.

**§10.3.2** If the School District does not provide a Complainant with Supportive Measures, then the Director of Human Resources must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

**§10.3.3** The documentation of certain bases or measures does not limit providing additional explanations or detailing additional measures taken in the future.

## **Article XI. Employees Covered under a Collective Bargaining Agreement**

**§11.1** The employment terms set out in this policy work in conjunction with, and do not replace, amend or supplement any terms or conditions of employment stated in any collective bargaining agreement that a union has with School District.

## **Article XII. Conduct Not Prohibited by this Policy**

**§12.1** This Policy is not intended to preclude or dissuade employees from engaging in legally protected activities or speech.

## **Article XIII. Definitions and Construction of this Policy**

**§13.1** *Capitalized Terms.* Except as expressly provided otherwise in any Policy, capitalized terms shall have the meanings specified in this Policy 104.

**§13.2** *Construction Generally.* Except as expressly provided otherwise in this Policy, (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereto" and "hereunder" refer to this Policy as a whole.

**§13.3** Unless the context clearly otherwise requires, references herein: (x) to sections, mean the sections and subsections of this Policy; (y) to this Policy means this Policy as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder.

**§13.4** Whenever the masculine is used in this Policy, the same shall include the feminine and whenever the feminine is used herein, the same shall include the masculine, where appropriate.

**§13.5** Whenever the singular is used in this Policy, the same shall include the plural, and whenever the plural is used herein, the same shall include the singular, where appropriate.

**§13.6** The headings used in this Policy are for reference and convenience only, do not in any way define, limit, describe, or amplify the provisions of this Policy or the scope or intent of this Policy, are not a part of this Policy, and will not enter into the interpretation of this Policy.

**§13.7** All references to “days” in this Policy mean calendar days unless otherwise stated. The term “business day” or “working day” means Monday through Friday, excluding holidays observed by the School District.

**§13.8** “Applicable Law” means and includes all federal, state and local statutes, ordinances, and regulations, including the rules and regulations of any government authority having appropriate jurisdiction, and any applicable court orders or decisions of a court having jurisdiction of the School District in effect as of the date that any act occurred.

**§13.9** “Assistant Superintendent” means the Assistant Superintendent, an Interim Assistant Superintendent, a Substitute Assistant Superintendent, or the designee of any of them.

**§13.10** “Coordinator” means and shall be interchangeable with “Director of Human Resources” and includes any designee of the Coordinator.

**§13.11** “Director of Human Resources” means the Director of Human Resources, an Interim Director of Human Resources, an Acting Director of Human Resources, a Substitute Director of Human Resources, or the designee of any of them.

**§13.12** “Required by Law” means a mandate contained in law that compels the School District to act or refrain from acting and that is enforceable in a court of law. “Required by Law” includes court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or an administrative body; conditions for participation in any program agreed upon by the School District or imposed upon the School District for participating in the program; and terms of assurances made by the School District to any state or federal agency.

**§13.13** “School Board” and “Board” means the Board of School Directors of the Southern Lehigh School District and the members of same, individually or in combination, as the situation demands.

**§13.14** “School District” means the Southern Lehigh School District,

**§13.15** “Superintendent” means the Superintendent, an Interim Superintendent, a Substitute Superintendent, or the designee of any of them.

Legal References:

1. 43 P.S. 336.3
2. 43 P.S. 951 et seq
3. 34 CFR Part 106
4. 20 U.S.C. 1681 et seq
5. 29 U.S.C. 206
6. 29 U.S.C. 621 et seq
7. 29 U.S.C. 794
8. 42 U.S.C. 1981 et seq
9. 42 U.S.C. 2000e et seq
10. 42 U.S.C. 2000ff et seq
11. 42 U.S.C. 12101 et seq
12. U.S. Const. Amend. XIV, Equal Protection Clause
13. 20 U.S.C. 1232g
14. 34 CFR 106.44
15. 34 CFR 106.45
16. 34 CFR 106.71
17. 34 CFR Part 99
18. 34 CFR 106.30
19. 34 U.S.C. 12291
20. 20 U.S.C. 1092
21. 34 CFR 106.8
22. Pol. 317
23. Pol. 317.1
24. Pol. 806
25. Pol. 824

16 PA Code 44.1 et seq

18 Pa. C.S.A. 2709

28 CFR 35.140

CFR Part 41

CFR Parts 1600-1691

EEOC Enforcement Guidance on Harris v. Forklift Sys., Inc., November 9, 1993 EEOC Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 18, 1999

EEOC Policy Guidance on Current Issues of Sexual Harassment, March 19, 1990 Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998)

Faragher v. City of Boca Raton, 524 U.S. 775 (1998)

Pol. 320

Pol. 815

Pol. 832

[1] 29 U.S.C.A. §§621-634.

[2] 29 U.S.C.A. §206(d).

[4] 29 CFR §36.135; 34 CFR §106.8; [5] 34 CFR §104.7.

