



## **Sexual Harassment (Title IX) Policy**

### **Reasons for Policy**

It is the policy of the New City School to maintain a learning and working environment that is free from sexual discrimination and harassment. In 2020, the U.S. Department of Education finalized new regulations governing Title IX of the Education Amendments of 1972 ("Title IX"), which prohibits sex discrimination in education programs provided by schools that receive federal funds. These regulations set forth a school's responsibilities under Title IX and the manner a school must respond to allegations of sexual harassment.

### **Definition**

Sexual Harassment is formally defined as conduct on the basis of sex that consists of:

1. An employee conditioning an individual's receipt of aid, benefit, or service on that individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct that a reasonable person would find "so severe, pervasive, and objectively offensive" that it effectively denies a person equal access to the school's education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking, as those terms are defined by federal law.

*(34 C.F.R. § 106.30).*

If the conduct described by a formal complaint does not meet the formal regulatory definition, the complaint **must** be dismissed with respect to whether it constitutes Sexual Harassment under Title IX. *(34 C.F.R. § 106.45(b)(2)(B)(3)(i)).* In such case, New City School reserves the right to move forward under any other applicable policy. However, for Title IX purposes, a formal complaint cannot move forward unless the complained-of conduct meets the formal definition.

### **Designation of a Title IX Coordinator**

New City School is required to designate and authorize at least one employee to serve as the "Title IX Coordinator" to coordinate compliance with Title IX responsibilities, to oversee investigation procedures, as well as to ensure a fair and equitable process for everyone involved. The Title IX Coordinator, if appropriate, may also serve as the Investigator.

### **Notice of the Title IX Coordinator and the Policy**

New City School is required to notify applicants for admission and employment, students, parents, legal guardians, employees, and all unions or professional organizations holding collective bargaining or professional agreements with New City School of the name or title, office address, email and telephone number of the Title IX Coordinator. *(34 C.F.R. § 106.8(a)).* New City School is required to prominently display the Title IX Coordinator's contact information, this policy and the Equal Opportunity Non-Discrimination Policy on the School's website. *(34 C.F.R. § 106.8(b)).*

### **Reporting Discrimination or Harassment**

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute

discrimination or harassment), at any time, in person, by mail, by telephone, or by email, using the Title IX Coordinator contact information - or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. (34 C.F.R. § 106.8(a)).

### **Grievance Process for a Formal Complaint**

**A. Formal Complaint:** A “formal complaint” is defined as a document that is either filed by the complainant or signed by the Title IX Coordinator alleging sexual harassment and requesting that the school investigate the allegation of sexual harassment. A third party is not allowed to file a formal complaint on the complainant’s behalf.

- Formal complaints may be addressed via an informal resolution process if the complainant and respondent both voluntarily agree in writing – but the school cannot offer an informal resolution process until a formal complaint has been filed. 34 C.F.R. § 106.45(b)(9).

### **B. General Objectives & Procedures**

**Equal Treatment:** New City School’s grievance process is intended to treat respondents and complainants equally and to objectively evaluate the evidence, presume the respondent is innocent until proven guilty, refrain from making credibility determinations based on the complainant/witness/respondent’s role in the proceedings, maintain reasonable timeframes. 34 C.F.R. § 106.45(b)(1).

**Designating Investigator(s) & Decisionmaker(s):** The Executive Director will designate an individual or individuals as “Investigators” (to investigate the complaint) and a different individual or individuals as “Decisionmakers” (to determine responsibility). New City School will not designate an individual as Title IX Coordinator, investigator(s), decisionmaker(s), or person(s) to facilitate an informal resolution process, that have a conflict of interest or bias for or against a complainant or respondent.

**Investigative Report:** After all the relevant evidence is gathered and considered, the Investigator will prepare a written “Investigative Report” for the Decisionmaker(s) that fairly summarize the relevant evidence. However, the Investigator must send each party all the relevant evidence and the parties must have at least 10 days to submit a written response to the evidence - which the Investigator will consider - prior to completion of the Investigative Report. The final Investigative Report must be sent to the parties at least 10 days before any Determination of Responsibility is made by the Decisionmaker(s).

**Evidentiary Standard:** New City School uses the preponderance of evidence evidentiary standard for all Title IX proceedings.

**Emergency Removal.** New City School reserves the right to remove a respondent from the school’s education program or activity on an emergency basis, provided that the school undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

### **C. Notice Requirement**



When New City School receives a formal complaint, it must provide a written notice to all known parties. The notice must contain the following:

1. Notice of the grievance process, including any informal resolution process developed by the school;
2. Notice of the allegations with “sufficient details known at the time and sufficient time to prepare a response before any initial interview.” “**Sufficient details**” is defined to include:
  - The identities of the parties involved in the incident,
  - The conduct allegedly constituting sexual harassment; and
  - The date and location of the alleged incident.
3. A statement that the respondent is presumed not responsible and that a determination regarding responsibility is made at the conclusion of the grievance process;
4. A notice to the parties that they may have an advisor of their choice, who may be, but need not be, an attorney, and who may inspect and review evidence; and
5. Notice of any provision of the school’s policies that prohibits knowingly making false statements or knowingly submitting false information.

*34 C.F.R. § 106.45(b)(2)*. If information required in the notice is not known when the complaint is filed, but is discovered during the school’s investigation, the school must share that information with both parties. *34 C.F.R. § 106.45(b)(2)(ii)*.

The notice regulations also provide that “the complainant cannot remain anonymous or prevent the complainant’s identity from being disclosed to the respondent via the written notice of allegations.” Similarly, if a Title IX Coordinator signs a formal complaint of sexual harassment, the complainant’s identity **must** be provided to the respondent. *34 C.F.R. § 106.6(e)*.

#### **D. The Investigation Process**

The Executive Director-appointed Investigator(s) will conduct the investigation process, which may consist of personal interviews with the complainant, the respondent, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also involve the inspection of documents and electronic records, such as email, texts or on-line accounts deemed pertinent by the investigator.

The parties must be provided equivalent opportunities to present and review evidence, to have an advisor (who may be an attorney) present, and to have their advisor participate in any meeting, hearing, or investigative interview.

With respect to any party being interviewed or otherwise met with - New City School must give written notice of the date, time, location, participants, and purpose of the interview, meeting, or hearing, with sufficient time for the subject party to prepare to participate.

The parties must be provided all the evidence subject to inspection and review in electronic format or hard copy, before the Investigative Report is completed.

Prior to completion of the Investigative Report, the Investigator must 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, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the Investigative Report. *34 C.F.R. § 106.45(b)(5)(vi)*.

The final Investigative Report must be sent to the parties at least 10 days before any Determination of Responsibility is made by the Decisionmaker(s), for the parties' review and written response. This 10-day window is separate from the 10-day window for the parties to review and respond in writing to the relevant evidence, and this also constitutes a separate opportunity for the parties to respond. *34 C.F.R. § 106.45(b)(5)(vii)*.

### **E. Determinations of Responsibility**

In determining responsibly, the Decisionmaker(s) will consider the Investigative Report and the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved, and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances.

New City School will not conduct any live hearings. *34 C.F.R. § 106.45(b)(6)(ii)*. As a result, after the Investigative Report has been provided to the parties, and before the Decisionmaker makes a final determination of whether or not the respondent is responsible for the alleged behavior, the school must provide each party the opportunity to submit "written, relevant questions" that the party wants asked of the opposing party or any witness, provide each party with the answers to their questions, and allow for additional, limited follow-up questions.

Irrelevant questions can be excluded; however, the decision to exclude a question as irrelevant must be explained. Certain questions regarding the complainant's sexual predisposition or sexual behavior are generally irrelevant, except for specific purposes related to demonstrating that someone other than the respondent engaged in the alleged behavior or if specifically related to an issue of consent.

Once all the relevant evidence is considered and the parties have had their opportunity to submit their written questions, the Decisionmaker will issue a written "Final Determination of Responsibility" (neither the Title IX Coordinator or any investigator may serve as the Decisionmaker). *34 C.F.R. § 106.45(b)(7)*. The Decisionmaker(s) must issue a written Final Determination of Responsibility that includes:

- Identification of the allegations potentially constituting sexual harassment under the definition provided by the regulations;
- A description of the procedural steps taken in the grievance process;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the school's policies to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any discipline imposed on the respondent, and any remedies provided to the complainant; and
- The school's procedures and permissible reasons for either party to appeal.



*34 C.F.R. § 106.45(b)(7)(ii)*. This Final Determination must be provided to both parties simultaneously. The determination is not final, however, until the appeal period expires, or any appeal is resolved. *34 C.F.R. § 106.45(b)(7)(iii)*.

Consequences for a Finding of Responsibility: If the respondent is determined to be responsible for sexual harassment, remedies may include, but not limited to, warning, suspension, exclusion, expulsion, remediation, termination, counseling or discharge. New City school may consider remedies to assist the complainant. New City School's actions taken for violation of this policy will be consistent with requirements of Minnesota and federal law.

## **F. Appeals**

New City School limits appeals to the Final Determination of Responsibility to three bases:

- If there was a procedural irregularity that affected the outcome;
- If new evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal is subsequently discovered and could reasonably affect the outcome; or
- If the Title IX Coordinator, investigator(s), and or decision-maker(s) had a conflict of interest or was biased against either of the individual parties, or against complainants or respondents in general, and that conflict of interest or bias affected the outcome of the matter. *34 C.F.R. § 106.45(b)(8)(i)*.

In the event of an appeal, the school sets equal procedures for both parties, providing that both parties have an opportunity to submit a written statement in support of, or challenging the outcome. The decisionmaker(s) on appeal must be different than the initial decisionmaker(s), but still cannot be the Title IX Coordinator or the Investigator. A written decision must be issued on appeal simultaneously to both parties.

## **Training Requirements**

All Title IX Coordinators, investigators, decisionmakers, and informal resolution facilitators must receive training on the definition of sexual harassment, how to conduct an investigation, how the school's grievance process works, and how to serve impartially. Investigators must also be trained on how to write fair investigation reports, and decision-makers must be trained on issues of relevance with respect to the written questions submitted following the completion of the investigation report. *34 C.F.R. § 106.45(b)(1)(iii)*. All training materials required by the regulations must be retained for seven years and must be made publicly available on the school's website. *34 C.F.R. § 106.45(b)(10)(i)(D)*.

**Adopted by the NCS Board of Directors, September 16, 2020**