

DRAFT

**BOARD AGENDA
REGULAR MEETING**

Thursday, August 17, 2023
7:00 PM In the School Cafeteria

CV-S Central School
Cherry Valley, NY

I. OPENING OF MEETING

A. QUORUM CHECK

B. CALL TO ORDER

C. PLEDGE OF ALLEGIANCE

D. PUBLIC HEARING - District Wide Safety Plan

E. SPECIAL PRESENTATIONS - Community Service, Student Representative, Administration & Board Committee Reports

F. ADDITIONS TO AGENDA

G. CORRESPONDENCE RECEIVED

H. SUPERINTENDENT'S REPORT

I. RECOGNITION OF VISITORS

II. PROPOSED EXECUTIVE SESSION SUBJECT TO BOARD APPROVAL

III. CONSENT AGENDA ITEMS - Consider motion to approve consent agenda items to include RESOLUTIONS 1-8-2023 through RESOLUTION 20-8-2023

A. RESOLUTION 1-8-2023

APPROVAL OF MINUTES – July 5, 2023 and July 31, 2023

B. RESOLUTION 2-8-2023

ACKNOWLEDGE RECEIPT OF TREASURER'S AND FINANCIAL REPORTS – June & July 2023

C. CONFIRM TAX ROLLS AND AUTHORIZE TAX LEVY

RESOLUTION 3-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District does hereby approve the tax levy in the amount of \$5,522,386 plus \$60,000 (library) and review the equalized tax rates as per Attachment III C.

D. FINANCIAL

RESOLUTION 4-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent does hereby acknowledge the following request to move to Reserves: Unassigned Fund Balance to Capital Reserve Equipment \$159,010

E. CLAY TARGET LEAGUE

RESOLUTION 5-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District hereby approves the participation of eligible students in grades 7-12 in the New York State Clay Target League, and authorizes the use and association of the District's name and likeness with the League to allow for team play in the 2023-2024 school year.

F. ACCEPT DONATION

RESOLUTION 6-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, does hereby accept a donation from the Cherry Valley-Springfield Endowment Foundation for Educational Excellence, Inc.: 7th & 8th Grade Social Studies Map Set - \$1375.00

G. THE VENDOR CONTRACT WITH OPPORTUNITIES FOR OTSEGO, INC.

RESOLUTION 7-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District does hereby approve the Extension of Vendor Contract to Provide Meals and/or Snacks for the Opportunities for Otsego, Inc. for the 2020-2021 school years as per Attachment III G.

H. PERSONNEL

RESOLUTION 8-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby accept the resignation of Johannah Mollitor, Secondary Earth Science Teacher, effective August 7, 2023.

RESOLUTION 9-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby accept the resignation of Timothy Fish, Full-time Bus Driver, effective July 17, 2023.

RESOLUTION 10-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby accept the retirement of Charles Alex, Technology Teacher, effective August 1, 2023.

RESOLUTION 11-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby appoint Matthew Druse to a position as the Water System Operator.

RESOLUTION 12-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby appoint Matthew Sanders to a position as a student cleaner for the 2023 summer.

RESOLUTION 13-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby appoint Skyler Babcock, who is professionally certified Early Childhood (B-2) and Childhood Education (1-6), on tenure as an Elementary Teacher effective August 31, 2023.

RESOLUTION 14-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby appoint Maxine Antunes-Reiff who is Permanently Certified English 7-12, to a position as an English Teacher beginning October 2, 2023 through June 26, 2024.

RESOLUTION 15-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby approve the following mentee/mentor pairings for the 2023-2024 school year:

Elisabeth Wathen - Donna Ahrens	Megan Richards - Traci Waterman
Sara Valenta - Crystal Pierce	Lisa Shaffer - Erin Seales
Celia Rathbun - Beth Spaulding	Cassie Clegg - Kristie Fassett

RESOLUTION 16-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby appoint the following Extracurricular assignments for the 2023-2024 school year: Boys Modified Soccer - Christopher Barown
Chaperone - Dances, Basketball Games, Concerts, Drama Performances & Track - Amanda Cade

RESOLUTION 17-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby appoint Jodi Mravlja as a weight room monitor for the 2023-2024 school year.

RESOLUTION 18-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby appoint the following as a Support Staff Substitute for the 2023-2024 school year: Linda Hurley Timothy Fish

RESOLUTION 19-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby appoint the following as an Instructional Substitute for the 2023-2024 school year: Linda Hurley

RESOLUTION 20-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby approve the following as a volunteer for the remainder of the 2023- 2024 school year: Celia Rathbun

IV. NEW BUSINESS

A. POLICY REVIEW

RESOLUTION 21-8-2023

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District does hereby conduct a first reading of Policies and Regulations: 0100 Nondiscrimination and Equal Opportunity, 0110.2 Sexual Harassment in the Workplace, 1740 Relations with Nonpublic Schools, 2210 Board Reorganizational Meeting, 2382 Broadcasting and Recording of Board Meetings, 4321 Programs and Services for Students with Disabilities, 4772 & 4772-R Graduation Ceremonies, 4821 School Ceremonies and Observances, 5040 Student Religious Expression (CV-S title is Prayer in the Schools), 5225 Student Personal Expression, 8413 Transportation for Nonpublic Students, 8414.5 & 8414.5-R Drug and Alcohol Testing of Drivers, and 9101 Employee Religious Expression.

V. OLD BUSINESS

VI. PROPOSED EXECUTIVE SESSION SUBJECT TO BOARD APPROVAL

- Matters leading to the employment of particular individuals(s)
- Employment history of particular individual(s) or corporation(s)

VII. ADJOURNMENT

RESOLUTION TO CONFIRM TAX ROLLS

WHEREAS, the Board of Education of the Cherry Valley-Springfield Central School District has been authorized by the voters at the Budget Vote to raise for the current budget and library levy of the 2023-2024 school year a sum not to exceed \$5,522,386 plus \$60,000 (library).

THEREFORE BE IT RESOLVED that, the Board of Education fix the equalized tax rates by towns as they appear on the following described tax roll:

Name of Town	Amount of Tax	Tax Rate	Amount of Tax	Tax Rate
Cherry Valley	\$1,214,600.37	12.18	\$13,377.65	.13
Decatur	15,992.67	25.03	176.14	.28
Middlefield	840,249.66	17.30	9,254.54	.19
Otsego	5,757.93	12.30	63.42	.14
Roseboom	768,753.00	12.35	8,467.07	.14
Springfield	2,243,738.28	13.38	23,888.86	.14
Westford	38,931.15	12.93	428.79	.14
Canajoharie	111,988.09	10.09	1,233.44	.11
Minden	282,374.22	12.61	3,110.08	.14
Warren	.63	21.58	.01	.24
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	\$5,522,386.00		\$60,000.00	

AND BE IT HEREBY DIRECTED THAT, a copy of this Warrant, duly signed, shall be affixed to the above-described tax rolls authorizing the collection of said taxes to begin September 1, 2023 and end November 6, 2026, giving an effective period of 60 days at the expiration of which time the tax collector shall make an accounting in writing to the Board.

AND IT IS FURTHER DIRECTED THAT, the delinquent tax penalties shall be fixed as follows:

- 1st month (9/1 – 10/3) – free period
- 2nd month (10/4 – 10/31) – interest of 2%
- 3rd month (11/1 – 11/6) – interest of 3%



EXTENSION OF VENDOR CONTRACT
to Provide Meals and/or Snacks

1. This is an extension of the signed Vendor Contract to provide meals and/or snacks between the Organization, Opportunities for Otesgo and the Vendor, Cherry Valley-Springfield Central School.
2. This extension is in effect from 09 / 01 / 2023 to 06 / 30 / 2024 and may be terminated by mutual consent or by either party for reasons of cause with at least 30 days' notice.

3. The current price per meal is:

Breakfast \$ 2.21 each
 Lunch \$ 4.03 each
 Supper \$ _____ each
 Snack \$ 1.18 each
 Total* \$ 7.42

4. The new price per meal is:

Breakfast \$ _____ each
 Lunch \$ _____ each
 Supper \$ _____ each
 Snack \$ _____ each
 Total* \$ _____


**The difference between the total current and total new price cannot exceed 5%.*

5. The original Contract was in effect from 09 / 01 / 2022 to 06 / 30 / 2023 and may be extended four times. This is the

(check one):

First Extension Second Extension _____ Third Extension _____ Last Extension _____

6. **Certification by Organization's authorized representative:** By signing this document the Organization agrees to extend the contract under the same terms and conditions as previously agreed and in accordance with the new price per meal indicated above.

Signature 
 Print Name Daniel Mastain
 Title CEO
 Date 4/28/23

7. **Certification by Vendor representative:** By signing this document the Vendor agrees to extend the contract under the same terms and conditions as previously agreed and in accordance with the new price per meal indicated above.

Signature _____
 Print Name _____
 Title _____
 Date ____/____/____

Email: _____
Vendor – attach a copy of the current health department permit.

This institution is an equal opportunity provider.

**Extension of Vendor Contract Instructions**

The extension clause in your contract allows you to extend the existing contract, up to four times, one year at a time. If your Organization elects not to extend the contract, please follow the procedures for a new contract as outlined in CACFP Policy Memo Number 215 *Purchasing Meals from a Food Service Vendor for Food Service Contracts less than or equal to \$250,000* or Policy Memo 216 *Purchasing Meals from a Food Service Vendor for Food Service Contracts greater than \$250,000*.

If you choose to extend the contract for one year, follow the steps below.

1. One month before your contract expires, contact your current Vendor and offer to extend the existing contract for another year.
2. Inform the Vendor that the terms and conditions of the original contract must remain the same, except for the price. The price per meal may be negotiated but the combined total cannot be greater than 5%.

For example, if the Vendor previously charged a total of \$3.00 for breakfast, lunch, and snack, the Vendor cannot charge more than \$3.15 (5% of 3.00 = \$.15).

3. If the Vendor agrees to maintain current prices or the increases are 5% or less, you can complete Sections 1, 2, 3 and 5 and sign Section 6. Send the extension form to the Vendor. The Vendor must complete Section 4 (the new price per meal), sign the form in Section 7 and attach a four-week menu, daily delivery invoice, and current health department permit.
4. If the Vendor wants a price increase greater than 5%, you cannot extend the existing contract. In this case, follow the procedures in CACFP Policy Memo Number 215 or 216.
5. If the total cost of the contract is:

Greater than \$250,000 per year

Submit the completed CACFP-141 (Extension of Vendor Contract), a current four-week menu, daily delivery invoices, and the Vendor's current health department permit to CACFP for approval.

Less than or equal to \$250,000 per year

Keep the completed CACFP-141 (Extension of Vendor Contract), a current four-week menu, daily delivery invoices, and the Vendor's current health department permit on file. Contact CACFP if you need assistance.

SCHOOL CEREMONIES AND OBSERVANCES

- () Required
- (X) Local**
- (X) Notice**

NOTE: We have suggested minor changes to this policy to clarify that the prohibition on religious celebrations is limited to those which are sponsored by the district. Equal Access Act protections for student activity group expression is addressed in policy 5210, and student personal expression is addressed in policy 5225, and we have added cross-references to those policies. Additionally, we suggest the other underlined language to clarify that this policy applies to reading religious materials in general, not the Bible specifically.

The Board of Education recognizes the value of certain ceremonies and observances in promoting patriotism and good citizenship among the students. Therefore, activities in schools commemorating national holidays such as Memorial Day, Thanksgiving and President's Day are encouraged.

The Board remains impartial with regard to religion and seeks neither to advance nor inhibit religion. Students, faculty and administration are reminded of the pluralism of religious beliefs and are urged to be conscious of and respect the sensitivities of others. Therefore, no district-sponsored religious observances or celebrations including organized prayer, bible reading scripture or religious materials, or other activities performed in a religious context may be held on public school property, except to the extent permitted by the Equal Access Act.

Notwithstanding, the Board recognizes that activities related to the celebration of religious holidays present an excellent opportunity to teach about religion and foster respect and understanding among students. In addition, educational goals motivated by secular purposes cannot always filter out religious aspects, and sometimes require the presentation of material with religious themes. Therefore, activities related to the observance of religious holidays will be permitted to the extent that they are conducted in an unbiased and objective manner and focus on the origins of the holiday, its history, and the generally agreed upon meaning of the holiday observance.

In planning activities related to a religious holiday or theme, special effort should be made to ensure that the activity is not devotional and students of all faiths can join without feeling that they are betraying their own beliefs. Therefore,

1. school and class plays ~~shall~~must not be overtly religious and church-like scenery will be avoided;
2. religious music ~~shall~~must not entirely dominate the selection of music; and
3. program notes and illustrations ~~shall~~must not be religious or sectarian.

The display of religious objects or symbols is also prohibited except to the extent that they are used as a teaching aid or resource to provide examples of cultural and religious heritage within the context of a short-term study in the curriculum such as world religions, art or history. Symbols which are secular and seasonal in nature, such as Santa Claus and Easter bunnies, can be displayed in a seasonal context.

Students ~~shall~~will be given the option to be excused from participating in those parts of a program or curriculum involving a religious theme which conflicts with their own religious beliefs.

Cross-ref:

5040, Student Religious Expression
5210, Student Organizations
5225, Student Personal Expression

Ref:

Santa Fe Indep. Sch. Dist. V. Doe, 530 U.S. 290 (2000) (constitutionality of student-led prayers at interscholastic athletic activities)

Lee v. Weissman, 505 U.S. 577 (1992) (constitutionality of clergy-led prayers at graduation ceremonies)

Lemon v. Kurtzman, 403 U.S. 602 (1971) (constitutional test to determine church-state issues)

Lynch v. Donnelly, 465 U.S. 668 (1984) (constitutionality of holiday display)

County of Allegheny v. American Civil Liberties Union of Greater Pittsburgh Chapter, 492 U.S. 573 (1989) (constitutionality of holiday display)

Florey v. Sioux Falls School District; 619 F2d 1311 (8th Cir., 1980) (constitutionality of school observance of holidays)

Matter of Rosenbaum, 28 EDR 138 (1988) (permissibility of religious music and art in schools)

Matter of Cromwell, 72 EDR 116 (1951) (religious holidays in schools)

Adoption date:

Adoption Date:

Classification:

Revised Dates: ;

CV-S Title =
Prayer in the
Schools.

Policy: 5040

Section: Policy Update - June 2023 - Third Installment

STUDENT RELIGIOUS EXPRESSION

Required

Local

Notice

NOTE: Federal law, first enacted as part of the No Child Left Behind Act of 2001 (NCLB) and retained under the Every Student Succeeds Act, requires that, as a condition of eligibility for federal education funds, school districts annually certify to the state that their policies do not prevent or otherwise deny participation in constitutionally-protected prayer in their public schools, as detailed in guidance issued by the U.S. Secretary for Education. Districts must submit the required certification in writing, by October 1st of each year.

While the law does not require a policy in this area, and this sample policy does not replace the required certification, school boards may wish to adopt it to make their responsibilities clear. We have expanded our prior sample policy on this topic with the underlined text, which address elements from the U.S. Department of Education's Guidance.

It is the policy of the Board of Education to not prevent, or otherwise deny student participation in, constitutionally protected prayer in the district's schools, consistent with guidance issued by the U.S. Secretary of Education, and applicable judicial decisions interpreting the religion clauses of the First Amendment of the U.S. Constitution. The district protects students' rights to freedom of expression and freedom of religious exercise in school. The district must also balance those rights with its duty to address religion in a neutral manner. All students have the right (and for those of compulsory education age, the duty) to attend school. The district promotes an educational climate where religious practices and beliefs are neither compelled nor prohibited for students. The district will consult with its school attorney for clarification on the application of this policy to individual situations, as needed. Generally, students will not be permitted to express themselves in a manner which constitutes discrimination or harassment against other students.

This policy supersedes any other Board policy that might be inconsistent with it.

I. Prayer

Prayer During Non-Instructional Time

Students may privately express themselves in accordance with their religious beliefs, for example by reading religious materials, saying prayers before meals, and worshiping or studying religious materials, either alone or with other students during non-instructional time (such as recess and meals), to the same extent that they may engage in nonreligious activities, as long as such activities do not disrupt the educational process of the school.

II. Other Religious Expression

Distribution of Religious Literature and Information

Students have a right to distribute religious literature to their schoolmates on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or activities. The district may impose the same reasonable time, place, and manner or other constitutional restrictions on distribution of religious literature as are placed on non-school literature generally, but will not single out religious literature for special regulation. See policy 5225, Student Personal Expression.

Dress Code

The district's dress code is included as part of the Code of Conduct. The dress code will not single out religious attire in general, or attire of a particular religion, for prohibition or regulation. If the district makes exceptions to the dress code for nonreligious reasons, it will also make exceptions for religious reasons, absent a compelling interest. Students may display religious messages on items of clothing to the same extent that they are permitted to display other comparable messages. Religious messages will not be singled out for suppression, but rather are subject to the same rules as generally apply to comparable messages.

Excusals from School for Religious Observance and Education

Parental requests to excuse students from school to accommodate religious needs will not be given less favorable treatment than parental requests for excusal for nonreligious needs. The district will not encourage nor discourage such absences, nor penalize students for them. Allowing student absence for religious observance and instruction is required under Education Law §3210 and Commissioner's regulations 8 NYCRR §109.2, upon written request by the parent/guardian. Students must make up any work missed. See policy 5100, Student Attendance. Students may be released for religious instruction for up to one hour each week.

III. Student Religious Groups and the Equal Access Act

Under the federal Equal Access Act, secondary school student religious activities are accorded the same access to federally-funded public secondary school facilities as are student secular activities. Student religious groups have the same right to access school facilities as enjoyed by other comparable non-religious groups. If the district creates a "limited open forum" (i.e., provides an opportunity for one or more non-curriculum related student groups to meet on school grounds during non-instructional time), it will not refuse access or discriminate based on religious, political, philosophical, or other non-curriculum related students groups to meet on school property during non-instructional time.

Such access includes use of school media – including the public address system, the school newspaper, and the school bulletin board – to announce their meetings on the same terms as other non-curriculum related students groups.

Cross-ref:

5100, Student Attendance

5210, Student Organizations

5225, Student Personal Expression

9101, Employee Religious Expression

Ref:

20 USC § 7904

Equal Access Act, 20 U.S.C. §§4071-4074

Education Law §§10-18 (Dignity for All Student Act)

Hsu v. Roslyn Union Free School District, 85 F.3d 839 (2d Cir.), cert. denied, 519 U.S. 1040 (1996)

Tinker v. Des Moines Indep. Community School District, 393 U.S. 503 (1969)

School Dist. of Abington Township, Pa. v. Schempp, 374 U.S. 203 (1963)

Engel v. Vitale, 370 U.S. 421 (1962)

Karen B. v. Treen, 653 F.2d 897 (5th Cir. 1982), aff'd, 455 U.S. 913 (1982)

Wallace v. Jaffree, 472 U.S. 38 (1985)

Santa Fe Independent School Dist. v. Doe, 530 U.S. 290 (2000)

Lee v. Weisman, 505 U.S. 577 (1992)

Lamb's Chapel v. Center Moriches Union Free School Dist., 508 U.S. 384 (1993)

Marsh v. Chambers, 463 U.S. 783 (1983)

Guidance in Constitutionally Protected Prayer in Public Elementary and Secondary Schools (2023), U.S. Department of Education,

http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html

Adoption date:

Adoption Date:
Classification:
Revised Dates: ;

NYSSBA Sample Policy

STUDENT PERSONAL EXPRESSION

- () Required
(X) Local
(X) Notice

NOTE: This policy addresses the complex area of student personal expression which takes place outside the context of school-sponsored activities. Student expression that occurs under the aegis of a school-sponsored activity is covered by policy 5220. Expression in the context of student groups, protected by the Equal Access Act, is covered by policy 5210. This policy clarifies the parameters for student speech that impacts the school environment. We suggest adding language regarding religious expression.

The Board of Education recognizes the importance and value of student personal expression and recognizes that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate” (see the *Tinker v. Des Moines* case). As in broader American society, the Board also understands that there is a balancing of an individual’s rights under the First Amendment with the rights of the community. Student personal expression in this context refers to student verbal and written communication using any medium (paper, e-mail, social media or website postings, etc.) including, but not limited to, poetry, prose, art, video and music composition that is intended to be shared with the broader school community, or other actions taken to express viewpoints such as demonstrating or protesting.

Although students generally retain their right to free expression in school, that right is not unfettered. School officials may regulate expression as to time, place and manner. Students’ expression which either is forecasted to cause or actually causes a substantial disruption and/or which materially interferes with school activities or rights of others is not constitutionally protected speech. Moreover, personal expression which involves threats or bullying/harassment of students and is directly connected to school or its activities is also not constitutionally protected speech.

Distribution of Materials

When students wish to personally express themselves in the broader school community by distributing materials, they must seek prior approval from the building principal or designee. The building principal or designee will render a decision within two school days of receiving the request. The building principal ~~shall~~will give due consideration to the constitutionally protected ~~right~~rights of freedom of expression and religion, the maintenance of the normal operation of school and its activities, the protection of persons and property and the need to assist students in learning appropriate ways to exercise their rights. Unless such student expression takes place within the confines of a school-sponsored event/activity (see policy 5220 for guidance on School-Sponsored Student Expression), authorization will be granted if:

- The material is distributed as directed by the Principal or designee in such a manner as to not materially or substantially interfere with the rights of others or substantially disrupt the normal operation of the school;
- The material is not considered to be obscene, lewd, indecent, libelous, an invasion of the privacy of other individuals, or an expression that attacks a person’s character, family, or actual or perceived race (including traits historically associated with race, including, but not limited to, hair texture and protective hairstyles such as but not limited to braids, locks, and twists), color, religion, religious practice, age, weight, sex, ethnic group, national origin, physical appearance, sexual orientation, gender (including gender identity or gender expression) or disabling condition.

- The material is free from advertisements or promotion of cigarettes, liquor, illegal or illicit drugs, or drug paraphernalia or other products or services harmful to minors and/or not permitted to minors by law or advocating breaking laws and school policies and/or regulations.

Procedural Due Process

Students seeking to distribute material within school buildings or at school events must present such material for prior review by the Building Principal who must make a decision regarding distribution within two (2) school days of receipt of the request and the provide the reason for the denial in writing. The aggrieved student(s) may within two (2) school days appeal in writing to the Superintendent of Schools. The Superintendent of Schools must issue a written decision within two (2) school days after receiving the appeal.

Off-Campus Student Expression

NOTE: Removing a student from the opportunity or privilege of representing the school or as a school officer may have First Amendment implications, and therefore districts should consult with school attorneys prior to enforcing training rules based upon student personal expression, particularly student off-campus personal expression.

Generally, school administrative authority regarding student expression does not extend beyond school grounds or school-sponsored functions. However, with today's technologies, the line between off and on campus expression can be blurred.

The First Amendment does not protect students from engaging in off campus personal expression which is forecasted to cause or actually causes substantial disruption or material interference with school activities or interrupts another individual's access to school, such threatening or bullying/harassing of others in the school community. Such conduct may subject the student to discipline under the Code of Conduct.

Student Demonstrations and Protests

Students maintain their constitutional right while they are in school, or at school sponsored events, to peacefully assemble. However, the district may take reasonable actions to maintain a safe and functioning learning environment, to ensure that the school environment is not materially disrupted. Accordingly, school officials maintain the authority to limit student demonstrations which result in materially disrupting the operation of the schools' educational process. In addition, the school may deem student absences from school or class to demonstrate or protest to be unexcused under the district's Attendance policy (#5100), and those absences may result in consequences under that policy.

The district may also plan and host its own events to address issues of student and school concern.

Violation of Policy

Students who violate this policy will be subject to the appropriate disciplinary action, which may include short or long-term suspension, in accordance with the Code of Conduct.

Cross-ref:

0115, Student Harassment and Bullying Prevention and Intervention

4526, Computer Use in Instruction

5040, Student Religious Expression

5100, Student Attendance

5210, Student Organizations

5220, School-Sponsored Student Expression

5300, Code of Conduct

Ref:

Mahanoy Area School District v. B.L., 594 U.S. ____ (2021), 141 S. Ct. 2038 (2021)

Doninger v. Niehoff, 642 F.3d 334 (2d Cir.), cert. denied, 132 S. Ct. 499 (2011)

Morse v. Frederick, 551 U.S. 393 (2007)

Bethel School District v. Fraser, 478 U.S. 675 (1986)

Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969) (limits on student free speech rights in school setting)

Eisner v. Stamford Board of Educ., 314 F Supp 832, mod'f'd 440 F2nd 803 (1971)

Adoption date:

Adoption Date:

Classification:

Revised Dates: ;

NYSSBA Sample Policy

EMPLOYEE RELIGIOUS EXPRESSION

- Required
- Local**
- Notice

The district does not discriminate against employees or applicants for employment on the basis of religion. Further, the district recognizes that employees have First Amendment rights to freedom of expression and to exercise religious beliefs, but that the district must also balance those rights with its duty to not impermissibly advance religion in public schools.

The district will consult with its school attorney for clarification on the application of this policy to individual situations, as needed.

Reasonable Accommodation of Religious Practices

NOTE: This section reflects the requirements of Title VII of the Civil Rights Act of 1964 and New York State Executive Law §296(10).

Pursuant to law, the district will make reasonable accommodations that allow employees to fulfill sincerely held practices of their religion, unless, after making a bona fide effort, the district is unable to do so without undue hardship on the conduct of its business. Such religious practices include but are not limited to observation of a sabbath day or other holy day, and the wearing of any attire, clothing, or facial hair in accordance with the requirements of the employee's religion.

NOTE: Please consult with the district's school attorney regarding use of paid leave and making up time taken for religious observance. New York State Executive Law §296(10) allows for absences from work for religious observance to be charged against leave with pay.

Any absence from work for religious observance must be made up by an equivalent amount of time and work at some other mutually convenient time, or charged against paid leave, or taken as leave without pay, at the district's discretion and/or in accordance with any applicable collective bargaining agreements. Employees making up time as an accommodation for religious observance during hours when premium wages (e.g., overtime, comp time, extra pay) or premium benefits (e.g., seniority, insurance, leave time, pension benefits) would normally apply will not be entitled to premium wages or premium benefits. Employees may take unpaid leave for religious observances if they require days in excess of personal leave days already provided.

Employees seeking religious accommodation must notify the district via their supervisor or the Director of Personnel (**or insert appropriate administrator**). The district will work with employees to establish reasonable accommodations, or determine that doing so would cause an undue hardship to the district.

An undue hardship is accommodation that would require a significant expense or difficulty to the district, considering factors such as costs, productivity, hiring/transferring employees, the number of individuals requiring a particular accommodation, or geographic separateness where the district has multiple facilities. An undue hardship also results from an accommodation which results in the employee being unable to perform the essential functions of their job and/or which negatively impacts the ability of the district to fulfill its primary mission of providing educational services to its students.

Religious Expression

District employees have First Amendment rights to religious expression and exercise. They must also be cognizant of the sensitive nature of their positions of authority to an audience of impressionable students. Students have the right to attend school in the district (and, for those of compulsory education age, are required to attend school) in an environment that respects the students' rights of freedom of religious belief or non-belief. Employees must not give the impression to students that their success or participation in school depends on agreement with or adherence to an employee's religious perspective or practices.

NOTE: The following two paragraphs are adapted from the U.S. Department of Education Guidance referenced below.

District employees, acting in their official capacities during their hours of work as set forth in their job descriptions, may not lead students in prayer, devotional readings, or other religious activities, nor may they use their authority to attempt to persuade or compel students to participate in prayer or other religious activities.

However, employees may take part in religious activities where the overall context makes clear that they are not participating in their official capacities as defined in their job descriptions.

*NOTE: The following paragraph reflects court cases decided in courts having jurisdiction over New York State: *Marchi v. Capital Region BOCES*, and *Silver v. Cheektowaga*.*

Employees must refrain from incorporating or proselytizing their personal religious perspectives to students during the course of their employment, other than what is communicated by the wearing of religious attire.

Cross-ref:
0100, Non-Discrimination and Equal Opportunity

Ref:
Title VII of the Civil Rights Act of 1964, 42 USC § 2000e et. seq
Executive Law §296(10)
Groff v. DeJoy 600 U.S. ___ (2023)
Kennedy v. Bremerton, 597 U.S. ___, 142 S. Ct. 2407 (2022)
Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60 (1986)
Abington v. Schempp, 374 U.S. 203 (1963)
Silver v. Cheektowaga CSD, 670 Fed. Appx. 21 (2d Cir. 2016), cert denied, 137 S. Ct. 2292 (2017)
Berkowitz v. East Ramapo CSD, 932 F.Supp.2d 513 (2013)
Maine-Endwell Teachers Ass'n v. Bd. of Educ of the Maine-Endwell CSD, 3 A.D.3d 685 (3d Dep't 2004)
Port Washington UFSD v. Port Washington Teachers Ass'n, 268 A.D.2d 523 (2d Dep't), appeal dismissed, 95 N.Y.2d 790, lv. to appeal denied, 95 N.Y.2d 761 (2000)
Marchi v. Board of Cooperative Educ. Serv., 173 F.3d (2d Cir.), cert denied, 528 U.S. 869 (1999)
Guidance in Constitutionally Protected Prayer in Public Elementary and Secondary Schools (2023),
U.S. Department of Education,
www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html

Adoption date:

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Classification:
Revised Dates: ;

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5040 PRAYER IN THE SCHOOLS

It is the policy of the Board of Education to not prevent, or otherwise deny participation in, constitutionally protected prayer in the district's schools, consistent with guidance issued by the U.S. Secretary of Education, and applicable judicial decisions interpreting the religion clauses of the [First Amendment of the U.S. Constitution](#).

Ref:

[20 USC §6321\(c\)](#) (No Child Left Behind Act of 2001)

Adoption date: July 9, 2015

Cherry Valley-Springfield Central School District

NON-DISCRIMINATION AND EQUAL OPPORTUNITY

(X) Required

- Local
- Notice

NEW NOTE: The state's model policy for workplace sexual harassment addresses all legally protected classes, and recommends the same complaint and investigation process be used for all claims of discrimination. We recommend in lieu of a separate grievance procedure for sexual harassment and one for other discrimination claims, that the district use the state's model policy. If the district had previously adopted the accompanying regulation 0100-R, it can be rescinded.

NOTE: The first paragraph of this policy reflects various amendments to state Executive Law, Education Law, and Civil Rights Law regarding protection against discrimination on the basis of traits associated with race such as hair texture and styles, religious practices, and gender identity. This policy offers a blanket notice of non-discrimination of all legally-protected classes, as well as addressing public notification requirements and setting up a grievance procedure for allegations of violations of civil rights. This policy also addresses website accessibility for persons with disabilities, further detailed below.

The Board of Education, its officers and employees, will not discriminate in its programs and activities on the basis of legally protected classes, such as, but not limited to: race (including traits historically associated with race, such as hair texture and protective hairstyles like braids, locks, and twists), color, national origin, creed, religion (including religious practices), marital status, sex (including pregnancy, childbirth, or related medical condition), gender identity and expression (i.e., actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic regardless of the sex assigned to that person at birth, including but not limited to the status of being transgender), age, sexual orientation, disability (physical or mental), predisposing genetic characteristic, military work or status, domestic violence victim status, citizenship/immigration status, or use of a guide dog, hearing dog, or service dog, as applicable. The district will provide notice of this policy in accordance with federal and state law and regulation.

This policy of nondiscrimination includes access by students to educational programs, counseling services for students, course offerings, and student activities, as well as recruitment and appointment of employees and employment pay, benefits, advancement and/or terminations.

Employees also have protections under state law against discrimination on the basis of their familial status, reproductive healthcare decisions (their own or their dependents) and certain prior criminal history.

Specific protections for students under the Dignity for All Students Act are addressed in policy 0115, Student Bullying and Harassment Prevention and Intervention. The district will follow the guidance from the State Education Department on creating a safe, supportive, and affirming school environment for transgender and gender-expansive students.

As a condition of participation in federal meal programs, the district will post the following statement: "In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity." Discrimination complaint information is available at <https://www.fns.usda.gov/civil-rights/usda-nondiscrimination-statement-other-fns-programs>.

NOTE: The following paragraph is optional, but the district is encouraged to utilize it to address website accessibility for persons with disabilities. Your district may wish to modify it to reflect any specific settlement agreements with the Office of Civil Rights. A specific plan for accessibility need not be included in this policy; but could be a separate document.

There are different commonly-accepted standards for website accessibility. One example is the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.0, Level AA, found at <https://www.w3.org/TR/WCAG/>. Another standard is set by the federal government for its agencies, codified in 34 CFR Part 1194. New York State has adopted some of these standards for its own agencies (sections 1194.22 and 1194.31).

Further information, including specific examples of the following, is available at ADA Best Practices Tool Kit for State and Local Governments, Chapter 5, Website Accessibility Under Title II of the ADA www.ada.gov/pcatoolkit/chap5toolkit.htm. A checklist is also available at: www.ada.gov/pcatoolkit/chap5chklst.htm.

Additionally, to promote the district website's accessibility to staff, students, and members of the community with disabilities, the district will maintain a website that is accessible (or contains accessible alternatives) on perceivability, operability and understandability principles. The district's **insert appropriate title, such as** Director of Technology] is responsible for considering the following when developing or updating the district website:

- Adding the text equivalent to every image;
- Posting documents in a text-based format such as HTML or RTF in addition to PDFs;
- Avoiding dictating colors and font settings;
- Including audio descriptions and captions to videos;
- Identifying other barriers to access; and
- Making other considerations when developing the district's website.

A finding that an individual has engaged in conduct in violation of this policy may result in disciplinary action and/or filing of a report with third parties in the manner prescribed by the district code of conduct, the law or applicable contract.

Nothing in this policy will be construed to prohibit a denial of admission into, or exclusion from, a course of instruction or activity based on a person's gender that would be permissible under the law, or to prohibit, as discrimination based on disability, actions that would be permissible under the law.

Annual Notification

At the beginning of each school year, the district will publish a notice of the established grievance procedures for resolving complaints of discrimination to parents/guardians, employees, students and the community. The public notice will:

NOTE: NYSSBA recommends including the full list of enumerated classes from state and federal law in the annual notice. Technically, the annual notice needs only to list those covered by federal law.

1. inform parents, employees, students and the community that education programs, including but not limited to vocational programs, are offered without regard to actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sex; sexual orientation, or gender (including gender identity and expression);
2. provide the name, address and telephone number of the person designated to coordinate activities concerning discrimination; and
3. be included in announcements, bulletins, catalogues, and applications made available by the district.

The ~~insert title, for example, Assistant Superintendent for Human Resources~~ has been designated to handle inquiries regarding the district's non-discrimination policies. Contact information for the ~~insert same title~~ is available on the district's website. ~~Complaints of sexual harassment or discrimination are covered by policy 0-110~~ All complaints of discrimination and harassment made by

employees and applicants are addressed by the process outlined in policy 0110.2, Sexual Harassment in the Workplace. Complaints of discrimination and harassment by students are addressed by the process outlined in policy 0115, Student Bullying and Harassment Prevention and Intervention.

All complainants and those who participate in the investigation of a complaint in conformity with state law and district policies, who have acted reasonably and in good faith, have the right to be free from retaliation of any kind.

The Board authorizes the Superintendent of Schools to establish such rules, regulations and procedures necessary to implement and maintain this policy.

Cross-ref:

0110.2, Sexual Harassment in the Workplace
0115, Student Bullying and Harassment Prevention and Intervention
5030, Student Complaints and Grievances
5300, Code of Conduct
9140.1, Staff Complaints and Grievances

Ref:

Age Discrimination in Employment Act of 1967 29 U.S.C. §§621 *et seq.*
Americans with Disabilities Act, 42 U.S.C. §§12101 *et seq.*
Title VI, Civil Rights Act of 1964, 42 U.S.C. §§2000d *et seq.* (nondiscrimination based on race, color, and national origin in federally assisted programs)
Title VII, Civil Rights Act of 1964, 42 U.S.C. §§2000e *et seq.* (nondiscrimination based on race, color, and national origin in employment)
Title IX, Education Amendments of 1972, 20 U.S.C. §§1681 *et seq.* (nondiscrimination based on sex)
§504, Rehabilitation Act of 1973, 29 U.S.C. §794
Individuals with Disabilities Education Law, 20 U.S.C. §§1400 *et seq.*
Genetic Information Nondiscrimination Act of 2008 P.L. 110-233
34 C.F.R. §§ 100.6; 104.8; 106.9; 110.25
Executive Law §§290 *et seq.* (New York State Human Rights Law)
Education Law §§10-18 (The Dignity for All Students Act)
Education Law §§313(3); 3201; 3201-a
ADA Best Practices Tool Kit for State and Local Governments, Website Accessibility Under Title II of the ADA (see Chapter 5 and Chapter 5 Addendum checklist), www.ada.gov/pcatoolkit/toolkitmain.htm
Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices,
<https://www.nysed.gov/sites/default/files/programs/student-support-services/creating-a-safe-supportive-and-affirming-school-environment-for-transgender-and-gender-expansive-students.pdf>

Adoption date:

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Revised Dates: ;

NON-DISCRIMINATION AND EQUAL OPPORTUNITY REGULATION

NOTE: We recommend rescinding this regulation, as new policy 0110.2 includes a complaint process that can be used for all employee complaints of discrimination and harassment, and student complaints of discrimination and harassment are addressed in policy and regulation 0115.

The procedures set forth in this regulation do not supersede any protection complainants are provided under existing state or federal law.

Definitions

- 1. **Complainant** means an applicant, employee, student or vendor who alleges that they have been subjected to discrimination, which may be a violation of this policy, as well as a violation of federal or state law or associated regulations, which has affected him/her.*
- 2. **Complaint** means any alleged act of discrimination which may be a violation of this policy, which may also violate federal and state civil rights laws or associated regulations.*
- 3. **Compliance** means the employee designated by the Board of Education to coordinate efforts to comply with and carry out responsibilities under the Civil Rights Act of 1964, Section 504 and the ADA. The district's compliance officer is: *(insert name and contact information)*.*

The investigation and resolution of any complaints alleging an action prohibited by the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act or the ADA will be dealt with in the following prompt, equitable and impartial manner:

A. Stage I—Compliance Officer

- 1. As soon as practicable, if possible within 30 days after the events giving rise to the allegation, complainants must file a complaint, preferably in writing using the district's complaint form, with the Compliance Officer. The Compliance Officer may informally discuss the complaint with the complainant and will promptly and thoroughly investigate the matter. All employees and students of the school district must cooperate with the Compliance Officer in such investigation.*
- 2. Within 15 days of receipt of the complaint, the Compliance Officer will make a finding in writing that there has or has not been a violation of the Civil Rights Act, Section 504 of the Rehabilitation Act or the ADA. In the event the Compliance Officer finds that there has been a violation, they will propose a resolution of the complaint.*
- 3. If the complainant is not satisfied with the finding of the Compliance Officer, or with the proposed resolution of the complaint, the complainant may, within 15 days after receiving the report of the Compliance Officer, file a written request for review by the Superintendent of Schools.*

B. Stage II—Superintendent of Schools

- 1. The Superintendent may request that the complainant, the Compliance Officer, student, or any member of the school district staff present a written statement setting forth any information that such person has relative to the complaint and the facts surrounding it.*
- 2. The Superintendent will notify all parties concerned as to the time and place when an informal hearing will be held where such parties may appear and present oral and written statements supplementing their position in the case. Such hearing will be held within 15 school days of the receipt of the appeal by the Superintendent.*

3. ~~Within 15 days of the hearing, the Superintendent will render a determination in writing. Such determination will include a finding that there has or has not been a violation of the Civil Rights Act, Section 504 of the Rehabilitation Act or the ADA, and if applicable, a proposal for equitably resolving the complaint.~~
4. ~~If the complainant is not satisfied with the determination of the Superintendent or the proposed resolution, the complainant may, within 15 days after its receipt, file with the Clerk of the Board of Education, a written request for review by the Board.~~

~~C. *Stage III – Board of Education*~~

1. ~~When a request for review by the Board has been made, the Superintendent will submit all written statements and other materials concerning the case to the President of the Board.~~
2. ~~The Board will notify all parties concerned of the time and place when a hearing will be held. Such hearing will be held within 15 school days of the receipt of the request of the complainant.~~
3. ~~The Board will render a decision in writing within 15 days after the hearing has been concluded.~~

Adoption date:

Adoption Date:

Classification:

Revised Dates: ;

SEXUAL HARASSMENT IN THE WORKPLACE

(X) Required

- Local
 Notice

NOTE: This model policy is largely based on a template developed by the New York State Department of Labor and New York State Division of Human Rights that can be used by employers to meet the New York State Labor Law requirements for a sexual harassment prevention policy. We suggest minor modifications to adapt the template to schools as a workplace as shown below. Employers are encouraged to tailor this policy to their individual needs, though as the minimum standard, no section in this policy should be omitted. The list of examples provided in this model policy is not meant to be exhaustive.

This policy is meant to replace policy and regulation 0110.2 and 0110.2-R. Additionally, the complaint process outlined in this policy serves to replace regulation 0100-R, Equal Opportunity and Non-discrimination Regulation.

Purpose and Goals

{Employer-Name} The _____ School District ("the district") is committed to maintaining a workplace free from harassment and discrimination. Sexual harassment is a form of workplace discrimination that subjects an employee to inferior conditions of employment due to their gender, gender identity, gender expression (perceived or actual), and/or sexual orientation. Sexual harassment is often viewed simply as a form of gender-based discrimination, but {Employer-name} the district recognizes that discrimination can be related to or affected by other identities beyond gender. Under the New York State Human Rights Law, it is illegal to discriminate based on sex, sexual orientation, gender identity or expression, age, race, creed, color, national origin, religion, citizenship/immigration status, military status, disability, pre-disposing genetic characteristics, familial status (including pregnancy, childbirth, or related medical condition), marital status, criminal history, or status as a victim of domestic violence. Our different identities impact our understanding of the world and how others perceive us. For example, an individual's race, ability, or immigration status may impact their experience with gender discrimination in the workplace. While this policy is focused on sexual harassment and gender discrimination, the methods for reporting and investigating discrimination based on other protected identities are the same. The purpose of this policy is to teach employees to recognize discrimination, including discrimination due to an individual's intersecting identities, and provide the tools to take action when it occurs. All employees, managers, and supervisors are required to work in a manner designed to prevent sexual harassment and discrimination in the workplace. This policy is one component of {Employer-Name's} the district's commitment to a discrimination-free work environment.

A. Goals of this Policy

Sexual harassment and discrimination are against the law. After reading this policy, employees will understand their right to a workplace free from harassment. Employees will also learn what harassment and discrimination look like, what actions they can take to prevent and report harassment, and how they are protected from retaliation after taking action. The policy will also explain the investigation process into any claims of harassment. Employees are encouraged to report sexual harassment or discrimination by filing a complaint internally with {Employer-Name} the district. Employees can also file a complaint with a government agency or in court under federal, state, or local antidiscrimination laws. To file an employment complaint with the New York State Division of Human Rights, please visit <https://dhr.ny.gov/complaint>. To file a complaint with the United States Equal Employment Opportunity Commission, please visit <https://www.eeoc.gov/filing-charge-discrimination>.

Sexual Harassment and Discrimination Prevention Policy

1. ~~{Employer Name's}~~ The district's policy applies to all employees, applicants for employment, and interns, whether paid or unpaid. The policy also applies to additional covered individuals. It applies to anyone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services in ~~our workplace~~ the district. These individuals include persons commonly referred to as independent contractors, gig workers, and temporary workers. Also included are persons providing equipment repair, cleaning services, or any other services through a contract with ~~{Employer Name}~~ the district. For the remainder of this policy, we will use the term "covered individual" to refer to these individuals who are not direct employees of the company.
2. Sexual harassment is unacceptable. Any employee or covered individual who engages in sexual harassment, discrimination, or retaliation will be subject to action, including appropriate discipline for employees. In New York, harassment does not need to be severe or pervasive to be illegal. Employees and covered individuals should not feel discouraged from reporting harassment because they do not believe it is bad enough, or conversely because they do not want to see a colleague fired over less severe behavior. Just as harassment can happen in different degrees, potential discipline for engaging in sexual harassment will depend on the degree of harassment and might include education and counseling. It may lead to suspension or termination when appropriate.
3. Retaliation is prohibited. Any employee or covered individual that reports an incident of sexual harassment or discrimination, provides information, or otherwise assists in any investigation of a sexual harassment or discrimination complaint is protected from retaliation. No one should fear reporting sexual harassment if they believe it has occurred. So long as a person reasonably believes that they have witnessed or experienced such behavior, they are protected from retaliation. Any employee of ~~{Employer Name}~~ the district who retaliates against anyone involved in a sexual harassment or discrimination investigation will face disciplinary action, up to and including termination. All employees and covered individuals working in the workplace who believe they have been subject to such retaliation should inform a supervisor, manager, or **name of appropriate person**. All employees and covered individuals who believe they have been a target of such retaliation may also seek relief from government agencies, as explained below in the section on Legal Protections.
4. Discrimination of any kind, including sexual harassment, is a violation of our policies, is unlawful, and may subject ~~{Employer Name}~~ the district to liability for the harm experienced by targets of discrimination. Harassers may also be individually subject to liability and employers or supervisors who fail to report or act on harassment may be liable for aiding and abetting such behavior. Employees at every level who engage in harassment or discrimination, including managers and supervisors who engage in harassment or discrimination or who allow such behavior to continue, will be penalized for such misconduct.
5. ~~{Employer Name}~~ The district will conduct a prompt and thorough investigation that is fair to all parties. An investigation will happen whenever management receives a complaint about discrimination or sexual harassment, or when it otherwise knows of possible discrimination or sexual harassment occurring. ~~{Employer Name}~~ The district will keep the investigation confidential to the extent possible. If an investigation ends with the finding that discrimination or sexual harassment occurred, ~~{Employer Name}~~ the district will act as required. In addition to any required discipline, ~~{Employer Name}~~ the district will also take steps to ensure a safe work environment for the employee(s) who experienced the discrimination or harassment. All employees, including managers and supervisors, are required to cooperate with any internal investigation of discrimination or sexual harassment.
6. All employees and covered individuals are encouraged to report any harassment or behaviors that violate this policy. All employees will have access to a complaint form to report

harassment and file complaints. Use of this form is not required. For anyone who would rather make a complaint verbally, or by email, these complaints will be treated with equal priority. An employee or covered individual who prefers not to report harassment to their manager or employer may instead report harassment to the New York State Division of Human Rights and/or the United States Equal Employment Opportunity Commission. Complaints may be made to both the employer and a government agency.

Managers and supervisors are required to report any complaint that they receive, or any harassment that they observe or become aware of, to **person or office designated**.

7. This policy applies to all employees and covered individuals, such as contractors, subcontractors, vendors, consultants, or anyone providing services in the workplace, and all must follow and uphold this policy. This policy must be provided to all employees in person or digitally through email upon hiring and will be posted prominently in all work locations. For those offices operating remotely, in addition to sending the policy through email, it will also be available on the organization's shared network.

What Is Sexual Harassment?

Sexual harassment is a form of gender-based discrimination that is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender. Sexual harassment is not limited to sexual contact, touching, or expressions of a sexually suggestive nature. Sexual harassment includes all forms of gender discrimination including gender role stereotyping and treating employees differently because of their gender.

Understanding gender diversity is essential to recognizing sexual harassment because discrimination based on sex stereotypes, gender expression and perceived identity are all forms of sexual harassment. The gender spectrum is nuanced, but the three most common ways people identify are cisgender, transgender, and non-binary. A cisgender person is someone whose gender aligns with the sex they were assigned at birth. Generally, this gender will align with the binary of male or female. A transgender person is someone whose gender is different than the sex they were assigned at birth. A non-binary person does not identify exclusively as a man or a woman. They might identify as both, somewhere in between, or completely outside the gender binary. Some may identify as transgender, but not all do. Respecting an individual's gender identity is a necessary first step in establishing a safe workplace.

Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment does not need to be severe or pervasive to be illegal. It can be any harassing behavior that rises above petty slights or trivial inconveniences. Every instance of harassment is unique to those experiencing it, and there is no single boundary between petty slights and harassing behavior. However, the Human Rights Law specifies that whether harassing conduct is considered petty or trivial is to be viewed from the standpoint of a reasonable victim of discrimination with the same protected characteristics. Generally, any behavior in which an employee or covered individual is treated worse because of their gender (perceived or actual), sexual orientation, or gender expression is considered a violation of ~~{Employer Name's}~~ the district's policy. The intent of the behavior, for example, making a joke, does not neutralize a harassment claim. Not intending to harass is not a defense. The impact of the behavior on a person is what counts. Sexual harassment includes any unwelcome conduct which is either directed at an individual because of that individual's gender identity or expression (perceived or actual), or is of a sexual nature when:

- The purpose or effect of this behavior unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment. The impacted person does not need to be the intended target of the sexual harassment;
- Employment depends implicitly or explicitly on accepting such unwelcome behavior; or
- Decisions regarding an individual's employment are based on an individual's acceptance to or rejection of such behavior. Such decisions can include what shifts and how many hours an employee might work, project assignments, as well as salary and promotion decisions.

There are two main types of sexual harassment:

- Behaviors that contribute to a hostile work environment include, but are not limited to, words, signs, jokes, pranks, intimidation, or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex, gender identity, or gender expression. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory, or discriminatory statements which an employee finds offensive or objectionable, causes an employee discomfort or humiliation, or interferes with the employee's job performance.
- Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions, or privileges of employment. This is also called quid pro quo harassment.

Any employee or covered individual who feels harassed is encouraged to report the behavior so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be discrimination and is covered by this policy.

A. Examples of Sexual Harassment

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited. This list is just a sample of behaviors and should not be considered exhaustive. Any employee who believes they have experienced sexual harassment, even if it does not appear on this list, should feel encouraged to report it:

- Physical acts of a sexual nature, such as:
 - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body, or poking another employee's body; or
 - Rape, sexual battery, molestation, or attempts to commit these assaults, which may be considered criminal conduct outside the scope of this policy (please contact local law enforcement if you wish to pursue criminal charges).
- Unwanted sexual comments, advances, or propositions, such as:

NOTE: We suggest removing the language below in ~~strikeout~~ regarding service industry workers and those who depend on tips, as being not relevant in the school setting.

- - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion, or other job benefits;
 - ~~This can include sexual advances/pressure placed on a service industry employee by customers or clients, especially those industries where hospitality and tips are essential to the customer/employee relationship;~~
 - Subtle or obvious pressure for unwelcome sexual activities; or
 - Repeated requests for dates or romantic gestures, including gift-giving.
- Sexually oriented gestures, noises, remarks or jokes, or questions and comments about a person's sexuality, sexual experience, or romantic history which create a hostile work environment. This is not limited to interactions in person. Remarks made over virtual platforms and in messaging apps when employees are working remotely can create a similarly hostile work environment.
- Sex stereotyping, which occurs when someone's conduct or personality traits are judged based on other people's ideas or perceptions about how individuals of a particular sex should act or look:
 - Remarks regarding an employee's gender expression, such as wearing a garment typically associated with a different gender identity; or

- Asking employees to take on traditionally gendered roles, such as asking a woman to serve meeting refreshments when it is not part of, or appropriate to, her job duties.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
 - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace;
 - This also extends to the virtual or remote workspace and can include having such materials visible in the background of one's home during a virtual meeting.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity, or gender expression, such as:
 - Interfering with, destroying, or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
 - Sabotaging an individual's work;
 - Bullying, yelling, or name-calling;
 - Intentional misuse of an individual's preferred pronouns; or
 - Creating different expectations for individuals based on their perceived identities:
 - Dress codes that place more emphasis on women's attire;
 - Leaving parents/caregivers out of meetings.

B. Who Can be a Target of Sexual Harassment?

NOTE: To be more relevant to the school setting, we suggest adding "student, volunteer, parent, community member" and removing "customer, patient, constituent" to the list below.

Sexual harassment can occur between any individuals, regardless of their sex or gender. Harassment does not have to be between members of the opposite sex or gender. New York Law protects employees and all covered individuals described earlier in the policy. Harassers can be anyone in the workplace. A supervisor, a supervisee, or a coworker can all be harassers. Anyone else in the workplace can also be harassers including an independent contractor, contract worker, vendor, client, customer, patient, constituent student, volunteer, parent, community member, board member, or visitor.

Sexual harassment does not happen in a vacuum and discrimination experienced by an employee can be impacted by biases and identities beyond an individual's gender. For example:

- Placing different demands or expectations on black women employees than white women employees can be both racial and gender discrimination;
- An individual's immigration status may lead to perceptions of vulnerability and increased concerns around illegal retaliation for reporting sexual harassment; or
- Past experiences as a survivor of domestic or sexual violence may lead an individual to feel re-traumatized by someone's behaviors in the workplace.

Individuals bring personal history with them to the workplace that might impact how they interact with certain behavior. It is especially important for all employees to be aware of how words or actions might impact someone with a different experience than their own in the interest of creating a safe and equitable workplace.

C. Where Can Sexual Harassment Occur?

Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer or industry sponsored events or parties. Calls, texts, emails, and social media usage by employees or covered individuals can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices, or during non-work hours.

Sexual harassment can occur when employees are working remotely from home as well. Any behaviors outlined above that leave an employee feeling uncomfortable, humiliated, or unable to meet their job requirements constitute harassment even if the employee or covered individual is at home when the harassment occurs. Harassment can happen on virtual meeting platforms, in messaging apps, and after working hours between personal cell phones.

Retaliation

Retaliation is unlawful and is any action by an employer or supervisor that punishes an individual upon learning of a harassment claim, that seeks to discourage a worker or covered individual from making a formal complaint or supporting a sexual harassment or discrimination claim, or that punishes those who have come forward. These actions need not be job-related or occur in the workplace to constitute unlawful retaliation. For example, threats of physical violence outside of work hours or disparaging someone on social media would be covered as retaliation under this policy.

Examples of retaliation may include, but are not limited to:

- Demotion, termination, denying accommodations, reduced hours, or the assignment of less desirable shifts;
- Publicly releasing personnel files;
- Refusing to provide a reference or providing an unwarranted negative reference;
- Labeling an employee as "difficult" and excluding them from projects to avoid "drama";
- Undermining an individual's immigration status; or
- Reducing work responsibilities, passing over for a promotion, or moving an individual's desk to a less desirable office location.

Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in "protected activity." Protected activity occurs when a person has:

- Made a complaint of sexual harassment or discrimination, either internally or with any government agency;
- Testified or assisted in a proceeding involving sexual harassment or discrimination under the Human Rights Law or any other anti-discrimination law;
- Opposed sexual harassment or discrimination by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of suspected harassment;
- Reported that another employee has been sexually harassed or discriminated against; or
- Encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment. Intentionally false or malicious complaints of sexual harassment may result in corrective or disciplinary action taken against the complainant.

Reporting Sexual Harassment

Everyone must work toward preventing sexual harassment, but leadership matters. Supervisors and managers have a special responsibility to make sure employees feel safe at work and that workplaces are free from harassment and discrimination. Any employee or covered individual is encouraged to report harassing or discriminatory behavior to a supervisor, manager or **person or office designated**. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager, or **person or office designated**.

Reports of sexual harassment may be made verbally or in writing. A written complaint form is attached to this policy if an employee would like to use it, but the complaint form is not required. Employees who are reporting sexual harassment on behalf of other employees may use the complaint

form and should note that it is on another employee's behalf. A verbal or otherwise written complaint (such as an email) on behalf of oneself or another employee is also acceptable.

Employees and covered individuals who believe they have been a target of sexual harassment may at any time seek assistance in additional available forums, as explained below in the section on Legal Protections.

Supervisory Responsibilities

Supervisors and managers have a responsibility to prevent sexual harassment and discrimination. All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing or discriminatory behavior, or for any reason suspect that sexual harassment or discrimination is occurring, are required to report such suspected sexual harassment to **person or office designated**. Managers and supervisors should not be passive and wait for an employee to make a claim of harassment. If they observe such behavior, they must act.

Supervisors and managers can be disciplined if they engage in sexually harassing or discriminatory behavior themselves. Supervisors and managers can also be disciplined for failing to report suspected sexual harassment or allowing sexual harassment to continue after they know about it.

Supervisors and managers will also be subject to discipline for engaging in any retaliation.

While supervisors and managers have a responsibility to report harassment and discrimination, supervisors and managers must be mindful of the impact that harassment and a subsequent investigation has on victims. Being identified as a possible victim of harassment and questioned about harassment and discrimination can be intimidating, uncomfortable and re-traumatizing for individuals. Supervisors and managers must accommodate the needs of individuals who have experienced harassment to ensure the workplace is safe, supportive, and free from retaliation for them during and after any investigation.

Bystander Intervention

Any employee witnessing harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to harassment is required to report it. There are five standard methods of bystander intervention that can be used when anyone witnesses harassment or discrimination and wants to help.

1. A bystander can interrupt the harassment by engaging with the individual being harassed and distracting them from the harassing behavior;
2. A bystander who feels unsafe interrupting on their own can ask a third party to help intervene in the harassment;
3. A bystander can record or take notes on the harassment incident to benefit a future investigation;
4. A bystander might check in with the person who has been harassed after the incident, see how they are feeling and let them know the behavior was not ok; and
5. If a bystander feels safe, they can confront the harassers and name the behavior as inappropriate. When confronting harassment, physically assaulting an individual is never an appropriate response.

Though not exhaustive, and dependent on the circumstances, the guidelines above can serve as a brief guide of how to react when witnessing harassment in the workplace. Any employee witnessing harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to harassment is required to report it.

Complaints and Investigations of Sexual Harassment

All complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. An investigation of any complaint, information, or knowledge of suspected sexual harassment will be prompt, thorough, and started and completed as soon as possible. The investigation will be kept confidential to the extent possible. All individuals involved, including those making a harassment claim, witnesses, and alleged harassers deserve a fair and impartial investigation.

Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. ~~{Employer Name}~~ The district will take disciplinary action against anyone engaging in retaliation against employees who file complaints, support another's complaint, or participate in harassment investigations.

~~{Employer Name}~~ The district recognizes that participating in a harassment investigation can be uncomfortable and has the potential to retraumatize an employee. Those receiving claims and leading investigations will handle complaints and questions with sensitivity toward those participating.

While the process may vary from case to case, investigations will be done in accordance with the following steps. Upon receipt of a complaint, **person or office designated**:

1. Will conduct a prompt review of the allegations, assess the appropriate scope of the investigation, and take any interim actions (for example, instructing the individual(s) about whom the complaint was made to refrain from communications with the individual(s) who reported the harassment), as appropriate. If complaint is verbal, request that the individual completes the complaint form in writing. If the person reporting prefers not to fill out the form, **person or office designated** will prepare a complaint form or equivalent documentation based on the verbal reporting;
2. Will take steps to obtain, review, and preserve documents sufficient to assess the allegations, including documents, emails or phone records that may be relevant to the investigation. **Person or office delegated** will consider and implement appropriate document request, review, and preservation measures, including for electronic communications;
3. Will seek to interview all parties involved, including any relevant witnesses;
4. Will create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
 - a. A list of all documents reviewed, along with a detailed summary of relevant documents;
 - b. A list of names of those interviewed, along with a detailed summary of their statements;
 - c. A timeline of events;
 - d. A summary of any prior relevant incidents disclosed in the investigation, reported or unreported; and
 - e. The basis for the decision and final resolution of the complaint, together with any corrective action(s).
5. Will keep the written documentation and associated documents in a secure and confidential location;
6. Will promptly notify the individual(s) who reported the harassment and the individual(s) about whom the complaint was made that the investigation has been completed and implement any corrective actions identified in the written document; and
7. Will inform the individual(s) who reported of the right to file a complaint or charge externally as outlined in the next section.

NOTE: We suggest adding language regarding record retention.

The district will retain the written documentation described above for a period of three years.

Appeals

NOTE: Appeals of decisions are not required by law. The district may choose to include an appeal process. The one below is suggested for the district, Based on our previous sample process.

Either party who is not satisfied with the outcome of the investigation may appeal to the Superintendent by submitting a written request within 15 calendar days of receiving notification of the outcome. The Superintendent will review the documentation from the initial complaint and will hold an informal hearing within 15 calendar days of the receipt of the appeal, where all involved parties may appear. The Superintendent will make a determination in writing within 15 calendar days of the hearing and notify the complainant and alleged harasser in writing of the determination, or that additional time is needed to complete the appeal.

If the Superintendent is the subject of the complaint, the appeal must be filed with the Board President, who will refer the complaint to a trained investigator not employed by the district.

Legal Protections and External Remedies

Sexual harassment is not only prohibited by ~~{Employer-Name}~~ the district, but it is also prohibited by state, federal, and, where applicable, local law.

The internal process outlined in the policy above is one way for employees to report sexual harassment. Employees and covered individuals may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may also seek the legal advice of an attorney.

A. New York State Division of Human Rights

The New York State Human Rights Law (HRL), N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State and protects employees and covered individuals, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the New York State Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints of sexual harassment filed with DHR may be submitted any time within three years of the harassment. If an individual does not file a complaint with DHR, they can bring a lawsuit directly in state court under the Human Rights Law, within three years of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to ~~{Employer-Name}~~ the district does not extend your time to file with DHR or in court. The three years are counted from the date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases receive a public hearing before an administrative law judge. If sexual harassment is found at the hearing, DHR has the power to award relief. Relief varies but it may include requiring your employer to take action to stop the harassment, or repair the damage caused by the harassment, including paying of monetary damages, punitive damages, attorney's fees, and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: www.dhr.ny.gov.

Go to dhr.ny.gov/complaint for more information about filing a complaint with DHR. The website has a digital complaint process that can be completed on your computer or mobile device from start to finish. The website has a complaint form that can be downloaded, filled out, and mailed to DHR as well as a form that can be submitted online. The website also contains contact information for DHR's regional offices across New York State.

Call the DHR sexual harassment hotline at 1(800) HARASS3 for more information about filing a sexual harassment complaint. This hotline can also provide you with a referral to a volunteer attorney experienced in sexual harassment matters who can provide you with limited free assistance and counsel over the phone.

B. The United States Equal Employment Opportunity Commission

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act, 42 U.S.C. § 2000e et seq. An individual can file a complaint with the EEOC anytime within 300 days from the most recent incident of harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint and determine whether there is reasonable cause to believe that discrimination has occurred. If the EEOC determines that the law may have been violated, the EEOC will try to reach a voluntary settlement with the employer. If the EEOC cannot reach a settlement, the EEOC (or the Department of Justice in certain cases) will decide whether to file a lawsuit. The EEOC will issue a Notice of Right to Sue permitting workers to file a lawsuit in federal court if the EEOC closes the charge, is unable to determine if federal employment discrimination laws may have been violated, or believes that unlawful discrimination occurred by does not file a lawsuit.

Individuals may obtain relief in mediation, settlement or conciliation. In addition, federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

If an individual filed an administrative complaint with the New York State Division of Human Rights, DHR will automatically file the complaint with the EEOC to preserve the right to proceed in federal court.

C. Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment or discrimination with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 22 Reade Street, 1st Floor, New York, New York; call 311 or (212) 306-7450; or visit www.nyc.gov/html/cchr/html/home/home.shtml.

D. Contact the Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement, or coerced sex acts, the conduct may constitute a crime. Those wishing to pursue criminal charges are encouraged to contact their local police department.

Notice and Training

NOTE: We have added this section to address the requirements for notice and training. The district's policy and regulation must be provided in English and an employee's primary language, for those languages for which the DOL has provided translated materials.

The district will provide all existing employees with either a paper or electronic copy of the district's sexual harassment policy and regulation, and will provide the same to new employees before the employee starts their job. These materials will be provided in English and in an employee's primary language, for those languages for which the NYS Department of Labor has provided a translated template policy.

NOTE: The paragraph below reflects that training must be provided in English and an employee's primary language, for those languages for which the DOL has provided translated materials. If the district employs minors/students, they must receive training as well. However, employees under 14 can be provided with simplified training.

All new employees will receive training on this policy and regulation at new employee orientation or as soon as possible after starting their job, unless they can demonstrate that they have received equivalent training within the past year from a previous employer. All other employees will be provided training at least once a year regarding this policy and the district's commitment to a harassment-free working environment. Principals and other administrative employees who have specific responsibilities for investigating and resolving complaints of sexual harassment will receive yearly training on this policy, regulation and related legal developments. Training will be provided in English and in an employee's primary language, for those languages for which the NYS Department of Labor has provided translated model training.

NOTE: Labor Law 201-g requires annual sexual harassment training for employees. The DOL has developed a model training program in consultation with the NYS Division of Human Rights. All employers (including school districts and BOCES) must either use this training program or one that at least meets the minimum standards of the model. The paragraph below outlines the main requirements. The DOL model training and standards can be found at <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Annual employee training programs will be interactive and include: (i) an explanation of sexual harassment consistent with guidance issued by the NYS Department of Labor and the NYS Division of Human Rights; (ii) examples of conduct that is unlawful sexual harassment; (iii) information on federal and state laws about sexual harassment and remedies available to victims of sexual harassment; (iv) information concerning employees' right to make complaints and all available forums for investigating complaints; and (v) address the conduct and responsibilities of supervisors.

Conclusion

The policy outlined above is aimed at providing district employees at ~~[Employer Name]~~ and covered individuals an understanding of their right to a discrimination and harassment free workplace. All employees should feel safe at work. Though the focus of this policy is on sexual harassment and gender discrimination, the New York State Human Rights law protects against discrimination in several protected classes including sex, sexual orientation, gender identity or expression, age, race, creed, color, national origin, military status, disability, pre-disposing genetic characteristics, familial status, marital status, criminal history, or domestic violence survivor status. The prevention policies outlined above should be considered applicable to all protected classes.

Ref:

Title VII of Civil Rights Act (1964), 42 U.S.C. §2000-e; 34 CFR §100 et seq.

Executive Law §296

Executive Law §296-d (prohibition of sexual harassment of employees and non-employees)

Labor Law §201-g (required workplace sexual harassment policy and training)

Civil Practice Law and Rules §§5003-b (nondisclosure agreements optional); 7515 (mandatory arbitration prohibited)

General Obligations Law §5-336 (nondisclosure agreements optional)

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

Burlington Industries v. Ellerth, 524 U.S. 742 (1998)

Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998)

Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986)

Adoption date:

Adoption Date:
Classification:
Revised Dates: ;

NYSSBA Sample Policy

SEXUAL HARASSMENT OF EMPLOYEES EXHIBIT

Complaint Form for Reporting Sexual Harassment

NOTE: This complaint form is largely based on the model complaint form developed by the NYS Department of Labor, modified slightly for use in the school setting. We have made changes to more closely align with the model form.

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form for targets to report alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form ~~to the best of your ability~~ and submit it to *[insert title, person or office designated; contact information for designee or office; how the form can be submitted]*. You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, the district should complete this form, provide you with a copy and follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form. For additional resources, visit:
<http://www.ny.gov/programs/combating-sexual-harassment-workplace>

YOUR COMPLAINANT INFORMATION ~~(for all persons making a complaint)~~

~~Your Name:~~

~~Home Address:~~

~~Home or Cell Phone:~~

~~Email:~~

~~Work Address:~~

~~Work Phone:~~

~~Job Title:~~

~~Email:~~

~~Select Preferred Communication Method (please select one):~~ ___ Email, ___ Phone, email, mail, ___ In person

SUPERVISOR SUPERVISORY INFORMATION

~~Immediate Supervisor's Name:~~

~~Title:~~

~~Work Phone:~~

~~Work Address:~~

COMPLAINT INFORMATION

1. Your complaint of Sexual Harassment is made against ~~(please include as much information as possible, if known)~~ about:

~~Name:~~

~~Job Title (if an employee)/Position:~~

~~Grade/Class (if a student):~~

~~School/Work Location Address:~~

~~Phone:~~

~~Relationship to you (please circle one below):~~ ___ Supervisor ___ Subordinate ___ Co-

~~Worker Student ___ Other:~~

(Please use additional sheets of paper if the complaint is against multiple people.)

2. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Date(s) and location(s) sexual harassment occurred:

Is the sexual harassment continuing? ____ Yes ____ No

4. Please list the name and contact information (if known) of any witnesses or individuals who may have information related to your complaint:

The following last question is optional, but may help the district's investigation.

5. Have you previously complained about or provided information (verbal or written) about sexual harassment or related incidents to the district? ____ Yes ____ No

If yes, when and to whom did you complain or provide information?

If you have retained legal counsel and would like us to work with them, please provide their contact information.

Print Name: _____

Signature: _____ Date: _____

Instructions for the District

If you receive a complaint about alleged sexual harassment, ~~you must~~ follow the district's sexual harassment prevention policy. ~~by investigating the allegations through actions including:~~

An investigation involves:

- Speaking with the ~~complainant~~ employee
- Speaking with the alleged harasser
- Interviewing witnesses
- Collecting and reviewing any related documents

While the process may vary from case to case, all allegations should be investigated promptly and resolved as quickly as possible. The investigation should be kept confidential to the extent possible.

Document findings of the investigation and basis for your decision along with any corrective actions taken, and notify the ~~complainant~~ employee and the individual(s) against whom the complaint was made (if the alleged harasser is a student, also notify the parent/guardian). This may be done via email.

Adoption date:

Adoption Date:

Classification:

Revised Dates: ;

SEXUAL HARASSMENT OF EMPLOYEES REGULATION

NOTE: We recommend rescinding this regulation, as it is replaced by new policy 0110.2, which includes a complaint and investigation process.

NOTE: Due to changes in state law aimed at sexual harassment in the workplace, we have split our sample regulation 0110-R into two policies and regulations, one addressing sexual harassment of students (0110.1-R) and one addressing sexual harassment of employees (0110.2-R). This regulation focuses on sexual harassment of employees as well as certain "non-employees" covered by state law (contractors, subcontractors, vendors, consultants or other persons providing services pursuant to a contract, or their employees). In the interest of simplicity, we have not shown all of the deleted text from the original policy pertaining to students. However, we have noted where substantive changes were made.

The main change to the state Human Rights Law (Executive Law §296) was to the legal standard of what constitutes harassment in the workplace. Now, such conduct need not rise to the level of "severe or pervasive" in order to be considered prohibited harassment. What this will look like in practice may not be known until it is tried in court. The law also specifically includes "inferior terms, conditions or privileges of employment" as a form of harassment.

Other changes in the law addressed providing this policy and required training in an employee's primary language, for those languages where the NYS Department of Labor (DOL) has provided a translation of their materials. Currently, those languages are: Spanish, Chinese, Korean, Russian, Italian, Polish, Bengali and Haitian Creole. Additionally, any non-disclosure agreement must be provided to the complainant in their primary language, regardless of whether that language is one of those identified above.

Due to a changing understanding and usage of the word "shall," to avoid confusion we have also changed all instances of "shall" to either "will" or "must" or other appropriate text to indicate that a particular action is required. We have also changed use of "he/she" "him/her" and "his/her" to the singular "they" "them" and "their" throughout.

Among other things, this regulation is intended to provide detailed guidelines to assist the district in determining whether alleged misconduct constitutes sexual harassment (i.e., harassment based on sex, sexual orientation, and/or gender identity or expression) and outlines potential sanctions and penalties for violating district policy/regulation.

This regulation is intended to create and preserve a working environment free from unlawful sexual harassment on the basis of perceived or self-identified sex, sexual orientation, and/or gender identity and expression, in furtherance of the district's commitment to provide a healthy and productive environment for all employees (including all staff, applicants for employment, both paid and unpaid interns, exempt and non-exempt status, part time, seasonal, and temporary workers, regardless of immigration status) and "non-employees" (i.e., contractors, subcontractors, vendors, consultant and other persons providing services pursuant to a contract, or their employees) that promotes respect, dignity and equality.

Sexual Harassment Defined

NOTE: We have deleted "actual or" in the definition of sexual harassment in the paragraph below (now it is "perceived or self-identified") to better align with the definition in the DOL model policy (the phrase "actual or perceived" aligns with the definition in DASA for students).

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of perceived or self-identified sex, sexual orientation, gender identity, gender expression, and transgender status.

NOTE: The following paragraph reflects the provisions of state Human Rights Law (Executive Law §296(1)(h)), which was amended to specifically state that for employees, harassment includes inferior terms, conditions, or privileges of employment.

The law also specifically says that harassment is prohibited regardless of whether it is severe or pervasive. The "severe and pervasive" standard set by previous court cases (Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986)) applied to whether or not a hostile work environment existed. Instead, while not specifically setting a new standard, the law states that it is an "affirmative defense" for employers (i.e., a lawsuit would be automatically dismissed) if the harassment "does not rise above the level of what a reasonable victim of discrimination with the same protected characteristics would consider petty slights or trivial inconveniences."

Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions or privileges of employment. Such harassment need not be severe or pervasive to be unlawful, and can be any harassing conduct that consists of more than petty slights or trivial inconveniences.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's perceived or self-identified sex, sexual orientation, gender identity or expression, and transgender status, when:

1. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of an employee's or "non-employee's" employment; or
2. submission to or rejection of that conduct or communication by an individual is used as the basis for decisions affecting an employee's or "non-employee's" employment; or
3. the conduct or communication has the purpose or effect of substantially or unreasonably interfering with an employee's or "non-employee's" work performance, or creating an intimidating, hostile or offensive working environment, even if the complaining individual is not the intended target of the sexual harassment.

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 sex, gender and sexual orientation stereotypes.

Unacceptable Conduct

NOTE: It is important for the district's regulation to include examples of sexual harassment, to put people on notice of the behavioral expectations, as well as help staff recognize when sexual harassment is occurring. While some of the conduct described below may seem more relevant to the student sexual harassment regulation, we are retaining the examples rather than removing them.

Conduct that the district considers unacceptable and which may constitute sexual harassment includes, but is not limited to, the following:

1. 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;
2. unwelcome sexual advances or invitations or requests for sexual activity, including but not limited to those in exchange for promotions, preferences, favors, selection for job assignments, etc., or when accompanied by implied or overt threats concerning the target's work evaluations, other benefits or detriments;
3. unwelcome 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;
4. 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.;

5. ~~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;~~
6. ~~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.;~~
7. ~~unwelcome and sexually offensive physical pranks or touching of an individual's clothing, such as hazing and initiation, "streaking" (running naked in public), "mooning" (exposing one's buttocks), "snuggies" or "wedgies" (pulling underwear up at the waist so it goes in between the buttocks), bra-snapping, skirt "flip ups," "pantsing" or "spiking" (pulling down someone's pants or swimming suit); pinching; placing hands inside an individual's pants, shirt, blouse, or dress, etc.;~~
8. ~~unwelcome leers, stares, gestures, or slang that are sexually suggestive; sexually degrading or derogatory or imply sexual motives or intentions;~~
9. ~~clothing with sexually obscene or sexually explicit slogans or messages;~~
10. ~~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;~~
11. ~~unwelcome written or pictorial display or distribution (including via electronic devices) of pornographic or other sexually explicit materials such as signs, graffiti, calendars, objects, magazines, videos, films, Internet material, etc.;~~
12. ~~other hostile actions taken against an individual because of that person's perceived or self-identified sex, sexual orientation, gender identity or transgender status, such as interfering with, destroying or damaging a person's work area or equipment; sabotaging that person's work activities; bullying, yelling, or name calling; or otherwise interfering with that person's ability to work or participate in school functions and activities; and~~
13. ~~any unwelcome behavior based on sexual stereotypes and attitudes that is offensive, degrading, derogatory, intimidating, or demeaning, including, but not limited to:~~
14.
 - a. ~~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;~~
 - b. ~~ostracizing or refusing to participate in group activities with an individual (including, but not limited to, projects or trips) because of the individual's perceived or self-identified sex, sexual orientation, gender identity or expression or transgender status;~~
 - c. ~~taunting or teasing an individual because they are participating in an activity not typically associated with the individual's sex, sexual orientation or gender.~~

~~For purposes of this regulation, action or conduct will be considered "unwelcome" if the employee or "non-employee" 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 work setting if the harassment impacts the individual's employment in a way that violates their legal rights, including when employees or "non-employees" travel on district business, or when the harassment is done by electronic means (including on social media).~~

Determining if Prohibited Conduct is Sexual Harassment

NOTE: This material puts individuals on notice of the standards that will be used to evaluate allegations of sexual harassment.

We have removed language related to the "severe and pervasive" standard. The "severe and pervasive" standard was set by a previous Supreme Court case (Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986)), used to determine whether or not a hostile work environment existed. The state Executive Law §296(1) was amended to specifically state that for employees, harassment on the basis

of sex, sexual orientation, gender identity or expression is prohibited regardless of whether it is severe or pervasive.

Complaints of sexual harassment will be thoroughly investigated to determine whether the totality of the behavior and circumstances meet any of the elements of the above definition of sexual harassment and should therefore be treated as sexual harassment. Not all unacceptable conduct with sexual connotations or based on sex may constitute sexual harassment. Such conduct must rise above what a reasonable victim of discrimination with the same protected characteristics would consider petty slights or trivial inconveniences to be considered sexual harassment. If the behavior doesn't rise to the level of sexual harassment, but is found to be objectionable behavior, the individual will be educated and counseled in order to prevent the behavior from continuing.

In evaluating the totality of the circumstances and making a determination of whether conduct constitutes sexual harassment, the individual investigating the complaint should consider:

1. the degree to which the conduct altered the conditions of the employee's or "non-employee's" working environment;
2. the type, frequency and duration of the conduct;
3. the identity of and relationship between the alleged harasser and the subject of the harassment (e.g., sexually based conduct by an authority figure is more likely to create a hostile environment than similar conduct by a peer);
4. the number of individuals involved;
5. the age and sex of the alleged harasser and the target of the harassment;
6. the location of the incidents and context in which they occurred;
7. other incidents at the school; and
8. incidents of gender-based, but non-sexual harassment.

Reporting Complaints

Employees and "non-employees" who believe they have been the target of sexual harassment in the workplace is encouraged to report complaints as soon as possible after the incident in order to enable the district to promptly and effectively investigate and resolve the complaint. Any person who witnesses or is aware of sexual harassment of an employee or "non-employee" is also encouraged to report the incident or behavior to the district. Targets are encouraged to submit the complaint in writing; however, complaints may be filed verbally.

NOTE: We have listed the Principal or Title IX Coordinator as the main individuals to receive harassment complaints. If other individuals are designated to receive complaints in your district, please revise this section. However, to be more consistent with the DOL model policy, we have expanded the sentence below to make clear the expectation that any supervisor or manager will receive complaints.

Complaints should be filed with the Principal or the Title IX coordinator; however, employees and "non-employees" can report complaints to any supervisor or manager.

NOTE: The first sentence of the paragraph below is suggested as a way to assist "non-employees" in making complaints, and also addresses employees making complaints on behalf of other employees and "non-employees." This is not required by law. However, the last sentence below makes clear the responsibilities for supervisory and managerial personnel, as required by Labor Law section 201-g and the DOL model policy.

School employees receiving complaints of sexual harassment from employees and "non-employees" must either direct the complainant to the Building Principal or Title IX coordinator, or may report the incident themselves. Supervisory and managerial personnel are required to report complaints of sexual harassment received by employees and "non-employees" to the Principal or Title IX coordinator, and will be subject to discipline for failing to report suspected or reported sexual harassment, knowingly allowing sexual harassment to continue, or engaging in any retaliation.

In order to assist investigators, targets should document the harassment as soon as it occurs and with as much detail as possible including: the nature of the harassment; dates, times, places it has occurred; name of harasser(s); witnesses to the harassment; and the target's response to the harassment.

Confidentiality

It is district policy to respect the privacy of all parties and witnesses to complaints of sexual harassment. 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 member responsible for investigating complaints will discuss confidentiality standards and concerns with all complainants.

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

1. the request may limit the district's ability to respond to their complaint;
2. district policy and federal law prohibit retaliation against complainants and witnesses;
3. the district will attempt to prevent any retaliation; 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 and preventing the harassment of others.

Investigation and Resolution Procedure

NOTE: The law does not address investigation and resolution of sexual harassment complaints of "non-employees" as distinct from employees. The model policy from the DOL treats employees and non-employees the same with regard to investigations.

A. Initial (Building-level) Procedure

NOTE: The DOL model policy includes language regarding prompt and thorough investigations, which should be completed as soon as possible.

The Principal or the Title IX coordinator will conduct a preliminary review when they receive a verbal or written complaint of sexual harassment, or if they observe sexual harassment. Except in the case of severe or criminal conduct, the Principal or the Title IX coordinator should make all reasonable efforts to resolve complaints informally at the school level. The goal of informal investigation and resolution procedures is to end the harassment and obtain a prompt and equitable resolution to a complaint. All persons involved in an investigation (complainants, witnesses and alleged harassers) 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.

NOTE: The district's regulation should include a time frame within which the investigation will commence. The DOL model policy indicates that investigations must commence "immediately" but this is not defined. Below we suggest this be two working days, but recommend consulting with your attorney who may advise beginning investigations on a different timeframe.

Immediately, but no later than two working days following receipt of a complaint, the Principal or Title IX coordinator shall begin an investigation of the complaint according to the following steps:

1. Interview the target and document the conversation. Instruct the target to have no contact or communication regarding the complaint with the alleged harasser. Ask the target specifically what action they want taken in order to resolve the complaint. Refer the target, as appropriate, to school social workers, school psychologists, crisis team managers, other school staff, or appropriate outside agencies for counseling services.
2. Review any written documentation of the harassment prepared by the target. If the target has not prepared written documentation, ask the target to do so, providing alternative formats for individuals with disabilities who may need accommodation. If the complainant refuses to complete a complaint form or written documentation, the Principal or Title IX coordinator shall complete a complaint form (see exhibit 0110.2 E) based on the verbal report.
3. Request, review, obtain and preserve relevant evidence of harassment (e.g., documents, emails, phone records, etc.), if any exist.
4. Interview the alleged harasser regarding the complaint and inform the alleged harasser that if the objectionable conduct has occurred, it must cease immediately. Document the conversation. Provide the alleged harasser an opportunity to respond to the charges in writing.
5. Instruct the alleged harasser to have no contact or communication regarding the complaint with the target and to not retaliate against the target. Warn the alleged harasser that if they make such contact with or retaliate against the target, they will be subject to immediate disciplinary action.
6. Interview any witnesses to the complaint. Where appropriate, obtain a written statement from each witness. Caution each witness to keep the complaint and their statement confidential. Employees may be required to cooperate as needed in investigations of suspected sexual harassment.
7. Review all documentation and information relevant to the complaint.
8. Where appropriate, suggest mediation as a potential means of resolving the complaint. In addition to mediation, use appropriate informal methods to resolve the complaint, including but not limited to:
 - a. discussion with the accused, informing them of the district's policies and indicating that the behavior must stop;
 - b. suggesting counseling and/or sensitivity training;
 - c. conducting training for the department or school in which the behavior occurred, calling attention to the consequences of engaging in such behavior;
 - d. requesting a letter of apology to the complainant;
 - e. writing letters of caution or reprimand; and/or
 - f. separating the parties.
9. Involvement and Notification
 - a. If the alleged harasser is a student, their parents/guardians will be notified within one school day of allegations that are serious or involve repeated conduct.
 - b. If the alleged harasser is a student receiving special education services under an IEP or section 504/Americans with Disabilities Act accommodations, the committee on special education will be consulted to determine the degree to which the student's disability caused the discrimination or policy violation. In addition, due process procedures required for persons with disabilities under state and federal law will be followed.
 - c. The Principal or Title IX Coordinator (i.e., the investigator) will submit a copy of all investigation and interview documentation to the Superintendent.
 - d. The investigator will report back to both the target and the accused, notifying them in writing, and also in person as appropriate regarding the outcome of the investigation and the action taken to resolve the complaint. The investigator will instruct the target to report immediately if the objectionable behavior occurs again or if the alleged harasser retaliates against them.
 - e. The investigator will notify the target that if they desire further investigation and action, they may request a district level investigation by contacting the Superintendent of Schools. The investigator will also notify the target of their right to contact the U.S.

Department of Education's Office for Civil Rights, the U.S. Equal Employment Opportunity Commission, the New York State Division of Human Rights, and/or a private attorney.

10. Create a written documentation of the investigation, kept in a secure and confidential location, containing:
 - a. A list of all documentation and other evidence reviewed, along with a detailed summary;
 - b. A list of names of those interviewed along with a detailed summary of their statements;
 - c. A timeline of events;
 - d. A summary of prior relevant incidents, reported or unreported; and
 - e. The final resolution of the complaint, together with any corrective action(s).

If the initial investigation results in a determination that sexual harassment did occur, the investigator will promptly notify the Superintendent, who will then take prompt disciplinary action in accordance with district policy, the applicable collective bargaining agreement or state law.

NOTE: The law addresses when "non-employees" are the target of sexual harassment, but not where they are the alleged harasser. We suggest discussing with the district's counsel including language in contracts that addresses actions the vendors/contractors will take to protect the school environment in allegations of harassment, including serious, extreme or criminal misconduct. Such actions could include barring the alleged harasser from the school setting or having contact with school personnel, pending the outcome of the investigation.

If a complaint received by the Principal or the Title IX Coordinator contains evidence or allegations of serious or extreme harassment, such as employee to student harassment, criminal touching, quid pro quo (e.g., offering an employment reward or punishment as an inducement for sexual favors), or acts which shock the conscience of a reasonable person, the complaint will be referred promptly to the Superintendent. In addition, where the Principal or the Title IX coordinator has a reasonable suspicion that the alleged harassment involves criminal activity, they must immediately notify the Superintendent, who will then contact appropriate law enforcement authorities. Where criminal activity is alleged or suspected by a district employee, the accused employee will be suspended pending the outcome of the investigation, consistent with all contractual or statutory requirements.

Any party who is not satisfied with the outcome of the initial investigation by the Principal or the Title IX coordinator may request a district-level investigation by submitting a written complaint to the Superintendent within 30 days.

B. District-level Procedure

The Superintendent will promptly investigate and resolve all sexual harassment complaints that are referred by a Principal or Title IX coordinator, as well as those appealed to the Superintendent following an initial investigation by a Principal or Title IX coordinator. In the event the complaint of sexual harassment involves the Superintendent, the complaint will be filed with or referred to the Board President, who will refer the complaint to a trained investigator not employed by the district for investigation.

The district-level investigation should begin as soon as possible but not later than three working days following receipt of the complaint by the Superintendent or Board President.

In conducting the formal district-level investigation, the district will use investigators who have received formal training in sexual harassment investigation or that have previous experience investigating sexual harassment complaints.

If a district investigation results in a determination that sexual harassment did occur, prompt corrective action will be taken to end the harassment. Where appropriate, district investigators may

suggest mediation as a means of exploring options of corrective action and informally resolving the complaint.

No later than 30 days following receipt of the complaint, the Superintendent (or in cases involving the Superintendent, the Board-appointed investigator) will notify the target and alleged harasser, 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 30 days 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 sexual harassment investigations and hearings.

External Remedies

NOTE: The paragraphs below reflect the remedies available to employee targets of sexual harassment in New York State. Note that under the amended Executive Law §297(5), as of August 12, 2020, complainants will have three years to bring a complaint to the NYS Division of Human Rights (previously the limit was one year).

Employee targets have the right to register sexual harassment complaints with the U.S. Department of Education's Office for Civil Rights (OCR), the federal Equal Employment Opportunity Commission (EEOC) 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 EEOC can be contacted at (800) 669-4000, <https://www.eeoc.gov/employees/howtofile.cfm>, info@eeoc.gov, or at 33 Whitehall Street, 5th Floor, New York, NY 10004 or 300 Pearl Street, Suite 450, Buffalo, NY 14202. The DHR can be contacted at (888) 392-3644, www.dhr.ny.gov/complaint, or at 1 Fordham Plaza, Fourth Floor, Bronx, NY 10458.

NOTE: The text below refers to the right of targets to contact law enforcement, as included in the DOL model policy.

While not necessary to include in this regulation, note that mandatory arbitration clauses for sexual harassment are prohibited by the State Civil Practice Law and Rules §7515. Mandatory arbitration clauses are provisions in a contract or collective bargaining agreement which require conflicts to be addressed by an arbitrator before bringing the matter to court. While mandatory arbitration clauses are not common in employee agreements, please make sure that no contract entered into after July 11, 2018 (including those with contractors, vendors, and consultants) contains a mandatory arbitration clause.

Nothing in these regulations limits the right of the complainant to file a lawsuit in either state or federal court, or to contact law enforcement officials if the sexual harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, or other acts which may constitute a crime.

Nondisclosure agreements

NOTE: Nondisclosure agreements must be provided in writing in English and the primary language of the complainant. The paragraph below addresses nondisclosure agreements, which are only permitted at the complainant's discretion under State General Obligations Law (§5-336) and Civil Practice Law and Rules (§5003-b). Complainants have 21 days to consider such agreements, and 7 days to revoke the agreements.

The district may include nondisclosure agreements (to not disclose the underlying facts and circumstances of a sexual harassment complaint) in any sexual harassment settlement agreement or resolution only if it is the complainant's preference. Any such nondisclosure agreement will be provided in writing to all parties in plain English and, if applicable, in the primary language of the complainant. Complainants have twenty-one days to consider any such nondisclosure provision before

it is signed by all parties, and have seven days to revoke the agreement after signing. Nondisclosure agreements only become effective after this seven-day period has passed.

Retaliation Prohibited

NOTE: We have retained references to both the educational environment and the workplace in this section, to protect students from retaliation when making or assisting in employee sexual harassment complaints.

Any act of retaliation against any person who opposes sexually harassing behavior, 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 sexual harassment 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 person from coming forward to make or support a sexual harassment claim, and any other form of harassment. Such actions need not be job- or education-related, or occur in the workplace or educational environment, to constitute unlawful retaliation. Any person who retaliates is subject to immediate disciplinary action, up to and including suspension or termination.

Discipline/Penalties

Any individual who violates the sexual harassment policy by engaging in prohibited sexual harassment will be subject to appropriate disciplinary and/or remedial action. 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 discipline policy and applicable law.

Employees: Discipline may range from a warning up to and including termination, to be imposed consistent with all applicable contractual and statutory rights.

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

"Non-employees" (i.e., contractors, subcontractors, vendors, consultant and other persons providing services pursuant to a contract, or their employees): 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.

False Complaints

False or malicious complaints of sexual harassment may result in corrective or disciplinary action taken against the complainant.

Training

NOTE: The paragraph below reflects that the district's policy and regulation must be provided in English and an employee's primary language, for those languages for which the DOL has provided translated materials.

All employees will be informed of this policy and regulation in employee handbooks, on the district website and other appropriate materials. A poster summarizing the policy will also be posted in a prominent location at each school. The district will provide all existing employees with either a paper or electronic copy of the district's sexual harassment policy and regulation, and will provide the same to new employees before the employee starts their job. These materials will be provided in English and in an employee's primary language, for those languages for which the NYS Department of Labor has provided a translated template policy.

All students will be informed of the basic provisions of this policy and regulation (e.g., that sexual harassment of employees and "non-employees" is prohibited, as well as what is appropriate and inappropriate behavior) in student handbooks, on the district website and student registration materials. In addition, 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 on appropriate and inappropriate behavior.

NOTE: The paragraph below has been modified to reflect that training must be provided in English and an employee's primary language, for those languages for which the DOL has provided translated materials. Note that if the district employs minors/students, they must receive training as well. However, employees under 14 can be provided with simplified training.

All new employees will receive training on this policy and regulation at new employee orientation or as soon as possible after starting their job, unless they can demonstrate that they have received equivalent training within the past year from a previous employer. All other employees will be provided training at least once a year regarding this policy and the district's commitment to a harassment-free working environment. Principals, Title IX coordinators, and other administrative employees who have specific responsibilities for investigating and resolving complaints of sexual harassment will receive yearly training on this policy, regulation and related legal developments. Training will be provided in English and in an employee's primary language, for those languages for which the NYS Department of Labor has provided translated model training.

NOTE: Labor Law 201-g requires annual sexual harassment training for employees. The DOL is charged with developing a model training program in consultation with the NYS Division of Human Rights. All employers (including school districts and BOCES) must either use this training program or one that at least meets the minimum standards of the model. The paragraph below outlines the main requirements, and has been modified to include elements from the model training and guidance from the DOL. The DOL model training and standards can be found at <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Annual employee training programs will be interactive and include: (i) an explanation of sexual harassment consistent with guidance issued by the NYS Department of Labor and the NYS Division of Human Rights; (ii) examples of conduct that is unlawful sexual harassment; (iii) information on federal and state laws about sexual harassment and remedies available to victims of sexual harassment; (iv) information concerning employees' right to make complaints and all available forums for investigating complaints; and (v) address the conduct and responsibilities of supervisors.

NOTE: The law does not address how "non-employees" are to be notified of the district's sexual harassment policy. We suggest discussing with the district's counsel including language in contracts that addresses the actions that vendors/contractors will take to inform their employees of the district's sexual harassment policy and regulation, as well as the district's role. The DOL FAQ advises that employers are not required to train "non-employees" and do not need to provide a copy of their sexual harassment policy.

Principals in each school and program directors are 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 sexual harassment, the rights and responsibilities of students and employees, and the impact of sexual harassment on the target.

NOTE: The Board should be aware that the Public Employment Relations Board (PERB) has held that to the extent that a school district's sexual harassment regulations relate to investigatory and disciplinary procedures involving employees, the regulation is a mandatory subject of bargaining. (Patchogue-Medford UFSD, 30 PERB ¶ 3041 (1997)). Before adopting this regulation, the Board should consult with its labor counsel to determine whether the provisions contained in the regulation dealing with investigations of employee conduct and employee discipline represent a change in existing district practice or are in conflict with existing collective bargaining agreements.

~~Adoption date:~~

Adoption Date:
Classification:
Revised Dates: ;

NYSSBA Sample Policy

RELATIONSHIP WITH NONPUBLIC SCHOOLS

- () Required
- () Local
- (X) Notice**

NEW NOTE: This policy has been updated to summarize all the programs and services that districts are required to provide to nonpublic school students. In addition, the State Education Department's guidance advises that the Board of Education may adopt a policy to permit nonpublic school students to participate in the district's school-sponsored club activities. If the Board wishes to do this, we have included a new section below that addresses extracurricular activities.

NOTE: This policy reflects Education Law §§753 and 754 that requires an apportionment of computer hardware and technology equipment to be provided to nonpublic schools. The approach to this is not the same as with textbooks, as that is based solely on a formula. Districts are required to have a procedure in place for the request for a loan of instructional computer hardware. In addition, this policy reflects the loan of computer software as already authorized in §§751 and 752 of Education Law.

In recognition of its responsibility under state law and regulation, the Board of Education will make available required public school materials, equipment, and services to resident students who attend nonpublic schools.

For purposes of this policy, the term "parent" includes parent, guardian or person in parental relation.

Textbook Loan

~~The Board recognizes that section 701 of the Education Law requires all Boards~~ is required to purchase and to loan, upon individual request, textbooks to all children residing in the district who are attending grades kindergarten through twelve in any public or nonpublic school which complies with the compulsory education law.

It is also understood that the textbooks must be "loaned free" to the children, but Boards may make reasonable rules and regulations regarding such loan(s).

Therefore, the following rules and regulations ~~shall~~ govern the loan of textbooks to residents of the district attending nonpublic schools:

1. The textbooks ~~shall~~ remain the property of the district.
2. The textbooks ~~shall be~~ are returned at the end of the nonpublic school year.
3. If lost or destroyed, the textbooks ~~shall be~~ are paid for in the same fashion as the students attending district schools.

Any such textbook must be designated for use in a public school of the state or approved by a board of education or other school authority. The district may require parents or nonpublic schools to submit evidence of this, which may be in the form of a verifiable authenticated list of school districts using the textbooks from the publisher. Textbooks must be nonsectarian in nature and may not carry the endorsement of a religious authority.

The district is not required to spend more than the total amount of textbook aid it receives, although it may provide for additional funds as part of its annual budget. If funding is inadequate to purchase all the books required, to ensure equitable distribution, the district will determine which categories of

textbooks (e.g., type (such as consumable workbooks), subject areas, grade levels) may be loaned to both public and nonpublic students within the resources available.

The Superintendent will specify the date by which requests for textbooks must be received by the district and provide notice to all parents of resident students and administrators of those nonpublic schools attended by resident students (where known) of that date. This date must not be earlier than June 1st; however, requests made within 30 days of enrollment in the nonpublic school, or those made after the deadline will not be denied if a reasonable explanation for the delay is given. Requests may be submitted directly by the parent, or via a combined request from the nonpublic school.

Instructional Computer Hardware and Software Loan

The Board ~~recognizes its responsibility~~ is required to loan instructional computer hardware and software, upon request, to all pupils legally attending nonpublic elementary or secondary schools located in the school district. The district will loan instructional computer hardware and software on an equitable basis, however software and hardware purchased with any local, federal or state funds, other than Instructional Computer Hardware or Software Aid funds, are not required to be loaned to nonpublic school students.

In addition, the district will only purchase and loan software programs that do not contain material of a religious nature.

The Superintendent will specify the date by which requests for instructional computer hardware and software must be received by the district and provide notice to all nonpublic schools located within the district of that date. This date must not be earlier than June 1st; however, requests made within 30 days of enrollment in the nonpublic school, or those made after the deadline will not be denied if a reasonable explanation for the delay is given.

Library Materials

NEW NOTE: This section summarizes the requirements of Education Law §712 and 8 NYCRR 21.4 regarding library materials. The district can require requests be made directly with the district rather than through an official of the nonpublic school, or can designate a particular nonpublic school official. The district may attach specific lending procedures to this policy.

Library materials owned or acquired by the district are required to be made available on an equitable basis to students in grades K-12 attending nonpublic schools located within the district, where the materials are required for use as a learning aid in a particular class or program, and loaned for individual student use only, upon the individual request of a student or group of students. The request may be presented either directly to the district or via the administrator of the nonpublic school. Parents must guarantee the return of the materials, and must pay for the value of any loss and/or damages.

Special Education Services

NEW NOTE: The section below addresses §3602-c of Education Law (also known as the dual enrollment law), which requires school districts, upon parental request, to provide students attending nonpublic schools with education for students with disabilities.

The district must provide education for students with disabilities enrolled in nonpublic schools located within the district, regardless of whether such students are residents of the district, upon written request by the parent.

Such services will be provided in regular classes of the district, not separately from district students. See board policy 4321.10, Programs and Services for Parentally-Placed Nonpublic School Students with Disabilities, for additional information.

Career Education and Services for Gifted Students

NEW NOTE: The section below summarizes the requirements of Education Law §3602-c regarding dual-enrollment services for career education and gifted students.

If the district provides career education and programs for gifted students, the district is required to provide the same for students enrolled in nonpublic schools located within the district, upon written request by the parent. Such services will be provided in regular classes of the district, not separately from district students.

Written requests for career education or services to gifted students must be filed with the school district where the parent resides by June 1st of the year prior to the school year for which the request is made. The home school district will contract with the district for such services. Transportation will be provided between the nonpublic school and the site where the program is offered if that distance is more than a quarter of a mile. Transportation for students with disabilities will be provided in accordance with their needs.

Health and Welfare Services

NEW NOTE: The section below reflects the requirements of Education Law §912.

The district is required to provide, upon request of a nonpublic school, health and welfare services which are equivalent to those available to resident students attending the district's schools, to nonpublic school students who are district residents. For resident students attending a nonpublic school located outside the district's boundaries, the district will contract with the district where the nonpublic school is located to provide such services.

Transportation

NEW NOTE: The section below reflects the requirements of Education Law §3635.

The district will provide transportation to resident students attending nonpublic schools as required by law and outlined in policy 8413, Transportation for Nonpublic School Students.

Participation in Extracurricular Activities

NEW NOTE: Boards may permit nonpublic school students to participate in the district's school-sponsored club activities. However, SED guidance, while in the context of home-instructed students, advises that the Board of Education may permit "students educated at other than the public school" to participate in the district's non-credit bearing school-sponsored, extracurricular activities. If the Board wishes to do this, adopt policy language such as that in the paragraph below. The SED guidance does not specify whether such students would be those who reside in the district or attend a nonpublic school located in the district.

The alternative approach would be to prohibit participation by nonpublic students. In that case, use the following language instead: "Nonpublic school students are not permitted to participate in district activities or use district facilities, other than those open to the public or as permitted under district policy 1500, Public Use of School Facilities."

The Board recognizes that students attending nonpublic schools are not entitled to participate in interscholastic or intramural sports. However, the Board will permit such students to participate in certain other school-sponsored extracurricular activities **select option:** (a) if they are residents of the district (b) if the nonpublic school is located in the district (c) if either the student resides in the district or the nonpublic school is located in the district]. The district may request certification from the nonpublic school that all immunization requirements have been met. Specifically, the Board will permit nonpublic students to **[select or amend as appropriate:**

- participate in non-credit-bearing organized school activities such as clubs that are not open to the general public.
- participate in band and/or receive music lessons only if these activities are considered to be extra-curricular (not credit-bearing or graded or required for class); and
- use school facilities such as the library, career information center and gymnasium if there is mutual agreement on the part of all involved parties.

Regulations

The Board authorizes the Superintendent of Schools to establish any and all rules, regulations, and procedures necessary to implement and maintain this policy. ~~The Superintendent will specify the date by which requests must be received by the district and provide notice to all nonpublic schools within the district of that date.~~

NEW NOTE: We have added the cross-reference below to the policy on homeschooled students.

Cross-ref:

1741, Home-Schooled Students

4321.10, Programs and Services for Parentally-Placed Nonpublic School Students with Disabilities

8413, Transportation to Nonpublic School Students

Ref:

Education Law §§701 (textbooks); 712 (library materials); 751-754 (computer hardware and software); 912 (health services); 1709; 3204; 3602-c (special education); 3635 (career education and gifted services)

8 NYCRR §§21.2; 21.3; 21.4; 175.25

Mitchell v. Helms, 530 U.S. 793 (2000)

Russman v. Sobol, 85 F.3d 1050 (2d Cir. 1996)

Zobrest v. Catalina Foothills Sch. Dist., 509 U.S. 1 (1993)

Aguilar v. Felton, 473 U.S. 402 (1985)

Board of Educ. v. Allen, 392 U.S. 236 (1968)

Formal Opinion of Counsel No. 181, 5 EDR 258 (1966)

Appeal of Beyda, 58 Ed Dept Rep, Dec. No. 17,540 (2018)

Appeal of McLoughlin and Wood, 55 EDR Dec. No. 16,886 (2016)

Appeal of Hoerter, 48 EDR 373 (2009)

Appeal of Bruning, 48 EDR 84 (2008)

Adoption date:

Adoption Date:

Classification:

Revised Dates: ;

BOARD ORGANIZATIONAL MEETING

- () Required
(X) Local
(X) Notice

NOTE: This policy has been updated to reflect positions required to be appointed, alternatives to taking the oath of office at the organizational meeting, as well as changes to certain city school district meeting date options. This is also an opportunity to review the designations and authorizations that are routinely included on the organizational meeting agenda. Please review to determine which changes/additions may be appropriate for your district.

The annual school board organizational meeting is the school board's meeting after the annual election of school board members where the organization of the board is established, and school board officers are elected and other district officers are appointed for the upcoming year. In addition, boards often appoint other personnel, such as the internal auditor, school attorney, records access officer and records management officer, and designate depositories for district funds and newspapers for required notices.

In city school districts with a population of less than 125,000 inhabitants, the school board must also set the dates and time for its regular school board meeting, which must be held at least monthly (Education Law §2504(2)). Other types of school districts may choose to do this as well at the organizational meeting.

All school boards, except in common school districts, are required by Education Law to hold an annual organizational meeting, but they are not required to have a policy on the meeting. The Education Law sets forth the permissible dates for the meeting (Education Law § 1707(1) and (2)(union free and central school districts); § 1904 (central high school districts in Nassau County); §§ 2504(1), 2502(9)(o), 2502(9-a)(o) (city school districts with less than 125,000 inhabitants), §§ 2563(1), 2553(9)(f), 2553(10)(o)(large city school districts).

The annual organizational meeting is different from the annual district meeting, which establishes the district's annual budget vote and the election of school board members (see Policy 1050, Annual District Election and Budget Vote).

The Board of Education recognizes its obligation to hold an annual organizational meeting. The purpose of the organizational meeting is to elect officers of the Board and make the proper appointments and designations of other district employees for the proper management of the school district during the school year.

[For Union Free and Central School Districts only] The Board will hold its annual organizational meeting on the first Tuesday in July. If that day is a legal holiday, the Board will hold the meeting on the first Wednesday in July. The Board may alternately hold the meeting on a date during the first 15 days in July that is not a legal holiday. The Board will choose this date by resolution at a Board meeting before July.

[For Central High School Districts only] The Board will hold its annual organizational meeting on the second Tuesday in July.

[For City School Districts with less than 125,000 inhabitants only (Rensselaer (1st business day in July))] The Board will hold its annual organizational meeting during the first week in July, unless the Board passes a resolution to hold the meeting during the first fifteen days in July.

[For Large City School Districts only (except Rochester and Buffalo (1st business day in Jan.))] The Board will hold its annual organizational meeting on the second Tuesday in May.

The [title of official, typically either the previous Board President or the District Clerk] will call the meeting to order, and preside until the election of a new president. The order of business to

be conducted at the organizational meeting will include items required or implied by state law and/or regulation. The Board may also conduct general district business, including properly entering into executive session, if necessary, at the end of the meeting before adjourning.

I. Oath of Office

NOTE: Oaths of office may be administered to Board members by a person authorized by law to administer oaths any time within 30 days after their term of office has started. Such oath of office must be filed with the District Clerk, who will include that the oath has been taken in the minutes of the next Board meeting.

The **[insert title of official, typically the District Clerk]** will administer and countersign the oath of office to newly-elected Board members who have not already taken the oath of office, or plan to within 30 days after commencement of their term. The oath will conform to Article XIII-1 of the New York State Constitution, and Section 10 of the Public Officers Law. Any oaths taken outside of the Organizational meeting will be entered into the minutes of the next Board meeting. ~~No new Board member shall be permitted to~~ members may take office or vote until he/she has they have taken the oath of office.

II. Election of Board Officers

The Board will elect a president and vice-president for the ensuing year, and the District Clerk will administer the oath of office to them. A majority of all members of the Board ~~shall be~~ is necessary for a valid election.

III. Appointment of District Officers

The Board will appoint and the Board President administer the oath of office to the following district officers:

District Treasurer
District Clerk
Claims Auditor

Deputy Treasurer
Tax Collector

NOTE: A member of the school board may be appointed as clerk of the district. Residency in the school district is not a statutory requirement for the district clerk, treasurer, tax collector, or claims auditor if one is appointed. Each of the offices of tax collector, district treasurer, district clerk, and district auditor, if one is appointed, must be held by separate individuals. The Board is not required to appoint a claims auditor, but if it does so, the person appointed may not be a member of the Board, another district officer, the person responsible for the district's business management, the district's purchasing agent, or a person involved in the district's accounting functions. The Board may not appoint a bank to act as the district's treasurer, as this position must be filled by a person. However, the Board may pass a resolution to enter into a contract to provide for the deposit of the school district's payroll in a bank or trust company and give them the authority to disburse such payroll as per section 96-b of the Banking Law.

IV. Appointment of Other Positions

NEW NOTE: We are showing the positions which must be appointed in italics, although there is no requirement that they be appointed at the annual organizational meeting. We have added the required positions of Data Protection Officer and Residential Facility Transition Liaison. For the latter, there is no official term for this position; we have created this term to indicate the duty under Education Law 112(1) and 8 NYCRR 100.2(ff) to facilitate student transition from residential facilities of OCFS, OASAS, OMH, OPWDD, DSS, correctional facilities and juvenile detention facilities. We also suggest changing the term "Homeless Liaison" to "McKinney-Vento Liaison".

The Board will appoint and establish the stipend (if any) for the following positions (*include only those that are appropriate for the district*):

<i>Director of School Health Services</i>	<i>School Attorney</i>
<i>Census Enumerator</i>	<i>Special Counsels</i>
<i>Designated Education Official</i>	<i>Attendance Officer</i>
<i>School Dentist</i>	<i>Insurance Consultant</i>
<i>Internal Auditor</i>	<i>Records Access Officer</i>
<i>External Auditor</i>	<i>Records Management Officer</i>
<i>Audit Committee</i>	<i>Parent Surrogates</i>
<i>Title IX/Section 504 Officer(s)</i>	<i>Asbestos Designee</i>
<i>Treasurer(s) of Student Activity Account</i>	<i>Purchasing Agent</i>
<i>Election Clerks and Inspectors</i>	<i>Deputy Purchasing Agent</i>
<i>Dignity Act Coordinator(s)</i>	<i>Homeless McKinney-Vento Liaison</i>
<i>Data Protection Officer</i>	<i>Residential Facility Transition Liaison(s)</i>
<i>Committee on Special Education (CSE)</i>	<i>Other Consultants</i>
<i>Committee on Preschool Special Education (CPSE)</i>	

NOTE: The Board is required to appoint some of these positions (such as the Director of School Health Services, Designated Education Official, Asbestos Designee, Internal Auditor, External Auditor, Audit Committee, Title IX/Section 504 Hearing Officer, Dignity Act Coordinator, McKinney-Vento Liaison, Data Protection Officer, Residential Facility Transition Liaison, CSE, CPSE, Records Access Officer, and Records Management Officer). However, the appointment of these positions at the organizational meeting is suggested, not mandatory. The school district's attorney is not considered to be a school district officer, and the Board is not required by law or regulation to appoint one. Also note that the Designated Educational Official is a position required by Education Law §305(31), whose duties include receiving and maintaining records from the juvenile justice system and criminal justice system upon release of a student and to coordinate the student's participation in such programs.

V. Bonding of Personnel

The Board will bond the following personnel handling district funds:

NOTE: A bond is required for the positions of Tax Collector, District Treasurer, Deputy Treasurer (when designated to counter-sign checks), Extraclassroom Activity Treasurer, and Claims Auditor (if one is appointed). The other two positions listed below (District Clerk and School Attorney) are optional.

<i>Tax Collector</i>	<i>Claims Auditor</i>
<i>District Treasurer</i>	<i>District Clerk</i>
<i>Deputy Treasurer</i>	<i>School Attorney</i>
<i>Treasurer of Student Activity Account</i>	

The Board may, in each instance, specify the amount of the bond it intends to obtain. The Board may include any of the above officers in a blanket undertaking, pursuant to law and Commissioner's Regulations, rather than bond individuals.

VI. Designations/Approvals

NOTE: In city school districts with a population less than 125,000 inhabitants, the Board must designate the dates and times for regular Board meetings, which must occur at least monthly. Most other districts set these dates and times at the organizational meeting as well, so we have included it in this sample policy.

The Board will designate/approve:

Official depositories for district funds
Official district newspapers

The Law Enforcement Unit
The day and time of regular meetings
The rate for mileage reimbursement
The calendar for the upcoming school year
The prices for school meals
Tuition rates for non-resident students
Travel and meal expense reimbursement limits

NOTE: The Board is required to designate one or more banks or trust companies as a depository or depositories for district funds in accordance with e General Municipal Law §10. The formal Board resolution designating such a depository must state the maximum amount which may be kept on deposit at any time in each designated bank or trust company; such amounts may be changed by the Board at any time by resolution.

Also note that the school calendar is likely to have been set prior to the annual organizational meeting, but the Board can "officially" approve it at the meeting.

The Board may wish to consider designating its "law enforcement unit," the individuals the district employs, or contracts with, to monitor safety and security in and around schools, for purposes of managing investigations and the records produced under FERPA.

The Board will also adopt the rotational list of impartial hearing officers for the district as provided by the State Education Department.

VII. Authorizations:

- a. of person to certify payrolls;
- b. of contracts for student services (such as health, cafeteria), and tuition contracts, when necessary;
- c. of attendance at conferences, conventions, workshops, etc., with designated expenses;
- d. to establish petty cash funds (and to set amount of such funds);
- e. to designate authorized signatures on checks;
- f. of Board and district memberships in professional organizations;
- g. to offer school district employee and officer indemnification under Public Officer's Law §18;
- h. of positions entitled to use district-owned cell phones and credit cards;
- i. of Board representative(s) for appointing Impartial Hearing Officers; and
- j. of Superintendent of Schools to approve budget transfers, and the monetary limits of such transfers.

NOTE: Boards are required to review certain policies on an annual basis (Investments, Purchasing, the Code of Conduct, and Parental Involvement (for Title I)). While this review is not required to be done at the organizational meeting, the Board may wish to consider including it then. The following paragraph is drafted for that option.

The Board will review its policies on Investments (6240) and Purchasing (6700), the Code of Conduct (5300), and Parental Involvement, as required by law. The Board will also review building-level student attendance data as required under Commissioner's Regulations section 104.1, and if the data shows a decline in attendance rates, will review and revise its policy on Attendance (5100).

Cross-ref:

1900, Parental Involvement
2270, School Attorney
2220, Board Officers
2230, Appointed Board Officials
2310, Regular Meetings
5100, Attendance
5252, Student Activities Funds Management
5300, Code of Conduct
6240, Investments

6650, Claims Auditor
6680, Internal Audit Function
6690, Audit Committee
6700, Purchasing
6741, Contracting for Professional Services

Ref:

New York State Constitution, Article XIII, §1
General Municipal Law §103(2) (official newspapers)
Public Officers Law §§10; 13; 30
Education Law §§112(1) (residential facility transition liaison); 305(31) (designated educational official); 1701 (meeting to elect president, may elect vice president); 1707 (union free school districts date of meeting); 1904 (central high school districts in Nassau county); 1720(2) (bonding of personnel); 2130 (appoint clerk, bonded treasurer and bonded tax collector); ~~2502(9) (City of Albany)~~, 2502(9-a) (City of Rensselaer); 2504 (small city meetings); 2527 (bonding officials in small city school districts); 2553(9) (City of Rochester), (10) (City of Buffalo); 2563 (large city meetings)
8 NYCRR §§104.1 (requirement to review attendance data); 100.2(ff) (residential facility transition liaison); 170.2 (bonding of tax collector, treasurer, claims auditor); 170.12 (bonding of claims auditor); 172.5 (bonding of extraclassroom activity treasurer)

Adoption date:

Adoption Date:
Classification:
Revised Dates: ;

BROADCASTING AND TAPING OF BOARD MEETINGS

- () Required
- (X) Local**
- (X) Notice

BROADCASTING AND ~~TAPING~~ RECORDING OF BOARD MEETINGS

NOTE: Upon review of this policy, we have updated it to better reflect the Committee on Open Government's recommendations for broadcasting and recording meetings open to the public, consistent with the Open Meetings Law. The law permits public bodies to adopt reasonable rules to govern taping or broadcasting of its meetings, if it so chooses. The full COOG guidance can be found at <https://opengovernment.ny.gov/open-meetings-law>.

As a meeting of a public body, school board meetings are open to the public so that people can witness and observe the decision making process. To further reach members of the community who may not be able to attend, meetings open to the public shall be are open to being photographed, broadcast, and/or webcast.

The use of any photography, broadcast, recording equipment or other such device to allow for the broadcasting or recording of public meetings of the Board of Education, or a committee appointed thereby, is permissible as long as use of the device is unobtrusive and will not distract from the true not obtrusive or disruptive, or interferes with the deliberative process of the Board, or the right of anyone attending to observe or listen to the meeting. Persons whose actions interfere with the deliberative process will be given a reasonable opportunity to modify their actions. The Board President or chairperson of the committee shall be informed prior to the meeting that such recordings are being made. The Board President, in turn, will inform attendees at the opening of the meeting.

NOTE: This next section reflects the district's option to use a recording as minutes.

The Board reserves the right to direct that an audio or visual recording be made to ensure a reliable, accurate, and complete account of Board meetings. Original, unedited versions of the recording may serve as meeting minutes (see policy 2360, Minutes).

Cross-ref:
2360, Minutes

Ref:
Open Meetings Law, Public Officers Law §§100 et seq.
Committee on Open Government, Model Rules: Public Access to Meetings of Public Body, <https://opengovernment.ny.gov/open-meetings-law>
http://dos.state.ny.us/coog/modelregs_photo_record_broadcast.html
Mitchell v. Board of Education of Garden City UFSD, 113 AD2d 924 (1985)
Feldman v. Town of Bethel, 106 AD 2d 695 (1984)
People v. Ystuenta, 99 Misc 2d 1105(1979)

Adoption date:

Adoption Date:
Classification:
Revised Dates: ;

NYSSBA Sample Policy

PROGRAMS FOR STUDENTS WITH DISABILITIES

(X) Required

- () Local
- () Notice

NEW NOTE: We have revised this policy in response to Formal Opinion of Counsel No. 242 from the NYS Department of Education, issued 7/6/23), regarding the applicability of a 2nd Circuit court ruling (A.R. v. Connecticut State Board of Education) to school districts in New York State. The Opinion and Court case clarify that the federal Individuals with Disabilities Act (IDEA) requires districts to provide special education services to students with disabilities until their 22nd birthday, if they have not received a high school diploma. New York State Education law section 4402 requires such services be provided until the end of the school year in which the student turns 21 (students with birthdays in July and August could continue until the end of the summer program).

NOTE: This policy serves as a comprehensive overview of the Board's obligations regarding special education (the other policies that follow in the series offer more detail on specific requirements). Special education is an area in which federal and state statutes, regulations and case law keep evolving, resulting in the need to periodically review and update school district policies.

The Board of Education ~~shall make~~ makes available a free appropriate public education to all students with disabilities who reside within its district and are eligible for special education and related services under the Individuals with Disabilities Education Act and Article 89 of New York's Education Law, and their implementing regulations. Special education and related services will be provided to resident eligible students with disabilities in conformity with their individualized education program (IEP) and in the least restrictive environment appropriate to meet their individual educational needs. Special education services or programs will be designed to enable ~~a student~~ students with disabilities to be involved in and progress in the general education curriculum, to the extent appropriate to his/her their needs.

The Board also ~~shall make~~ makes available special education and related services to eligible students with disabilities parentally placed in a nonpublic school located within the district, regardless of whether they are residents of the district. However, this obligation does not extend to resident students with disabilities who are placed by their parents in a nonpublic school within district boundaries because of a disagreement between the parents and the school district over the provision of a free appropriate public education. Nonpublic school students with disabilities who are not district residents but who reside within New York State will be provided programs and services in accordance with their individualized education services program (IESP). Nonpublic school students with disabilities who reside out-of-state will be provided services in accordance with their services plan (SP). (Refer to policy 4321.10, Programs and Services for Parentally-placed Nonpublic School Students with Disabilities under the IDEA and New York's Education Law Article 89 for more guidance on this topic).

In addition, to the maximum extent appropriate to their individual needs, eligible students with disabilities residing within the district and attending the district's public schools will be entitled to participate in school district academic, cocurricular and extracurricular activities available to all other students enrolled in the district's public schools. Such cocurricular and extracurricular activities may include athletics, transportation, recreational activities, school-sponsored special interest groups or clubs, and referrals to agencies that provide assistance to individuals with disabilities and the employment of students (including both employment by the school district and assistance in making outside employment available).

In providing a free appropriate public education to students with disabilities eligible under the IDEA and Article 89, the Board will afford the students and their parents the procedural safeguard rights they are entitled to under applicable law and regulations. The Board also will provide them with notice of such rights as required by law and regulation, using the form prescribed by the commissioner of education.

For purposes of this policy and others related to the provision of services to eligible students with disabilities, and consistent with applicable law and regulation, the word parent means a birth or adoptive parent, a legally appointed guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child; a person in parental relationship to the child as defined in section 3212 of the Education Law; an individual designated as a person in parental relation pursuant to title 15-A of the General Obligations Law, including an individual so designated who is acting in the place of a birth or adoptive parent (including a grandparent, stepparent, or other relative with whom the child resides; or a surrogate parent who has been appointed in accordance with commissioner's regulations.

NEW NOTE: In the Formal Opinion of Counsel No. 242, the State Education Department (SED) clarified that school districts are legally obligated to provide a free appropriate public education to students with disabilities up until a student's 22nd birthday. In this Opinion, SED also recommended districts consider providing special education and related services to students beyond their 22nd birthday, through to the end of the school year in which a student turns 22. SED recommends this decision be part of the larger discussion between schools and families concerning students' transition from school to post-school activities. Before adopting language to that effect, whether as a wholesale practice or upon recommendation by the CSE, we urge districts considering such a policy to consult with their school attorneys regarding the legal implications. Possible language could be "until the end of the school year in which they turn 22, after discussion with the student's family and upon the recommendation of the CSE" instead of "until their 22nd birthday" as shown below.

Eligible students with disabilities will be entitled to special education and related services until ~~the end of the school year in which they turn 21~~ their 22nd birthday or until they receive a local high school or Regents diploma, whichever comes first.

NOTE: Students with disabilities who graduate with a local high school or Regents diploma; or a skills and achievement commencement or career development and occupational studies commencement credential remain eligible for services in districts that provide post-graduation services to non-disabled students under section 3202 of New York's Education Law.

Students with disabilities may not be required to take medication as a condition for receiving a free appropriate public education.

To ensure the provision of a free appropriate public education to all eligible students with disabilities:

1. The Board will adopt and maintain a district special education services plan in conformance with Commissioner's Regulations (8NYCRR 200.2(c)). The plan will be available for public inspection and review by the Commissioner of Education.
2. School district staff will take steps to locate, identify, evaluate and maintain information about all children with disabilities within the district, including homeless children and children who are wards of the state, and children attending nonpublic school within the district (including religious schools), who are in need of special education.
3. The district will establish a plan and practice for implementing school-wide approaches and interventions in order to remediate a student's performance prior to referral for special education services. The district will provide general education support services, instructional modifications, and/or alternative program options to address a student's performance before referring the student to the Committee on Special Education (CSE). The ***insert name of district team that is responsible for RTI, i.e. Child Study Team*** will develop, implement and evaluate pre-referral intervention strategies (4321.2, School-wide Pre-referral Approaches and Interventions).

4. School district staff will initiate a request for evaluation of a student who has not made adequate progress after an appropriate period of time when provided instruction under a response to intervention program. In making the request the staff person will describe in writing intervention services, programs and methodologies used to remediate the student's performance prior to referral. In addition, the extent of parental contact will be described as well.
5. The Board will appoint a committee on special education (CSE), and, as appropriate, CSE subcommittees, to assure the timely identification, evaluation and placement of eligible students with disabilities.
6. The Board will arrange for special education programs and services based upon the recommendation of the CSE or CSE subcommittee.
7. The Superintendent ~~shall~~ will establish a plan for the recruitment, hiring and retention of staff appropriately and adequately prepared to meet the needs of students with disabilities including, but not limited to, highly qualified special education teachers.
8. The Superintendent ~~shall~~ will establish a comprehensive professional development plan designed to ensure that personnel necessary to carry out IDEA and Article 89 possess the skills and knowledge required to meet the needs of students with disabilities.
9. The Superintendent will establish a process for ensuring that district staff understand the right of students with disabilities to access and participate in the same academic, cocurricular and extracurricular programs and activities as all other students enrolled in the district's public schools, to the maximum extent appropriate to their individual needs.

Locate and Identify Students with Disabilities

The district will conduct an annual census to locate and identify all students with disabilities who reside in the district, and establish a register of such students who are entitled to attend the public schools of the district during the next school year, including students with disabilities who are homeless or wards of the State. The census ~~shall~~ will be conducted, and the registry maintained, in accordance with the requirements established in Commissioner's regulations.

The Superintendent will determine what other activities might be appropriate to help locate and identify students with disabilities. These may include, but are not limited to, the mailing of letters to all district residents regarding the availability of special education programs and services and their right to access such services, and/or the publication of a similar notice in school newsletters and other publications.

(Refer to policy 4321.10, Programs and Services for Parentally-placed Nonpublic School Students with Disabilities under the IDEA and New York's Education Law Article 89, for more information regarding how to locate and identify nonpublic school students with disabilities).

Evaluation of Students with Disabilities

To initially determine a student's eligibility for a free appropriate public education under the IDEA and Article 89, the district will conduct a full evaluation of the student in accordance within legally prescribed time lines. As set forth in Commissioner's regulations, the initial evaluation will include, at least, a physical examination, an individual psychological evaluation unless the school psychologist determines it unnecessary, a social history, an observation of the student in the student's learning environment to document the student's academic performance and behavior in the areas of difficulty, and other appropriate assessments or evaluations (including a functional behavioral assessment for a ~~student~~ students whose behavior impedes ~~his or her~~ their learning or that of others) to ascertain the physical, mental, behavioral and emotional factors that contribute to the suspected disabilities.

Once a student has been determined eligible to receive a free appropriate public education, the district will reevaluate the student with a disability whenever the student's parent requests a reevaluation, and when the district determines the educational and related services needs (including improved academic achievement and functional performance) of the child warrant a reevaluation. However, a

reevaluation must take place at least once every three years, unless the student's parent and the district agree it is unnecessary.

Parental Consent for Student Evaluations

Before conducting any type of evaluation, district staff will take steps to obtain written informed consent from a student's parent, as required by applicable law and regulations. They also will keep a detailed record of those attempts and their results, including phone calls and correspondence, visits to the parent's home and any responses received.

1. If a parent refuses to give consent for an initial evaluation, or fails to respond to such a request, the parent will be given an opportunity to attend an informal conference and ask questions about the proposed evaluation. Unless the referral for evaluation is withdrawn, if the parent continues to withhold consent, the Board will commence due process proceedings to conduct an initial evaluation without parental consent within the time lines established in Commissioner's regulations.
2. If a parent refuses to give consent for a reevaluation, or fails to respond to such a request, district staff will proceed with the reevaluation without parental consent if it has engaged in documented reasonable efforts to obtain such consent and the parent has failed to respond. If the district cannot document its efforts to obtain consent, the Board will commence due process proceedings to conduct a reevaluation without parental consent.
3. If district staff is unable to obtain consent for the initial evaluation or reevaluation of a home schooled or a parentally-placed nonpublic school student, the Board will not commence due process proceedings to conduct the evaluation without parental consent, and will consider the student as not eligible for special education.

Conduct of Evaluations

In conducting evaluations of students with disabilities, the district will use a variety of assessment tools and strategies, including parent-provided information, to gather relevant functional, developmental, and academic information for determining a student's eligibility for special education and related services, and the content of the student's individualized education program or individualized education services program or services plan in the case of nonpublic school students with disabilities (including information related to enabling the student to be involved in and progress in the general education curriculum).

The district also will assess a student in all areas of suspected disability, and the assessment and other evaluation used will not be discriminatory on a racial or cultural basis. In addition, students will be assessed in the language and form most likely to yield accurate information on what the student actually knows and can do academically, developmentally, and functionally, unless it is not feasible to do so.

In the case of students suspected of having a specific learning disability, the district will follow the procedures established in commissioner's regulations.

The district will notify a student's parent of any determination that no additional data is needed and the reasons for such a determination. It will also inform ~~the parent of his or her~~ parents of their right to request an assessment, notwithstanding that determination.

Eligibility Determination

The CSE or CSE subcommittee will determine whether a student is eligible for special education and related services under the IDEA and Article 89, as well as the student's educational needs.

The CSE or CSE subcommittee may not determine that a student is eligible for special education and related services if the determining factor is lack of appropriate instruction in the essential components of reading, including phonemic awareness, phonics, vocabulary development, reading fluency

(including oral reading skills), and reading comprehension strategies; or lack of appropriate instruction in math; or limited English proficiency.

Committee on Special Education

The members of the CSE and CSE subcommittees will include those individuals identified in applicable law and regulations, and their attendance at CSE and CSE subcommittee meetings will be required except as otherwise provided in law and regulations.

The parent of a student with disabilities is one of the mandated CSE and CSE subcommittee members and as such has a right to participate in CSE and CSE subcommittee meetings concerning the identification, evaluation, educational placement, and the provision of a free appropriate public education to their child. District staff will take steps to ensure the parent's participation, in accordance with the following:

1. CSE and CSE subcommittee meetings will be scheduled at a time and place that is mutually agreeable to the parent and the district.
2. The parent will be given at least five days notice of the time and place of a CSE or CSE subcommittee meeting, except as otherwise provided in law and regulation, along with notice of the purpose of the meeting, those who will attend (including name and title), and the parent's right to be accompanied to the meeting by person(s) the parent considers to have knowledge and special expertise about their child.
3. The parent and the district may agree to use alternative means of participation at CSE meetings, such as videoconferences or telephone conference calls.
4. District staff will take any action necessary to ensure that the parent understands the proceedings at CSE meetings, including arranging for an interpreter for deaf parents or parents whose native language is other than English.

The CSE or CSE subcommittee may meet without a student's parent only if district staff has been unable to obtain either parent's participation, and has a record of its attempts to arrange a mutually agreed upon time and place. Similarly, the CSE or CSE subcommittee may make a decision without the involvement of the student's parent only if district staff has been unable to obtain parental participation, even through the use of alternative means of participation, and has a record of its attempts to ensure parental involvement.

Provision of Services

The Board will arrange for appropriate special education and related services recommended by the CSE or CSE subcommittee within 60 school days of the district's receipt of parental consent to evaluate a student not previously identified as a student with a disability, or within 60 school days of referral for review of a student with a disability, except as otherwise provided in law and regulations.

All staff responsible for the implementation of a student's individualized education program, or an individualized education services program or services plan in the case of parentally placed nonpublic school students with disabilities, will be provided information regarding those responsibilities (Refer to policy 4321.5 for more information on this topic).

Parental Consent for the Provision of Services

The Board acknowledges that parental consent for initial evaluation does not constitute consent for placement for the provision of special education and related services. Therefore, district staff will take steps to obtain written informed consent for the initial provision of special education and related services to an eligible student. The Board will be precluded by applicable law and regulations from commencing due process proceedings to override the parent's refusal to provide such consent or override the parent's failure to respond to such a request.

Transition Service and Diploma/Credential Options

In accordance with law and regulation, the Board will ensure the provision of transition services, which are a coordinated set of activities for students with disabilities that facilitates movement from school to post-school activities, which may include but are not limited to post-secondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living or community participation. At age 15, or younger if appropriate, the student's IEP will include a statement of transition service needs and will include undertaking activities in the following areas:

- Instruction
- Related services
- Community experiences
- The development of employment and other post-school adult living objectives; and
- When appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

In developing the plan for transition services, students and parents will be made aware of the range of diploma and credential options available and the requirements associated with each option.

NOTE: One of the best resources available to school districts for understanding the overall and specific school district responsibilities in providing special education programs and services is the website maintained by the State Education Department's Office of Special Education. The address for the website is: <http://www.p12.nysed.gov/specialed>.

Cross ref:

1900, Parental Involvement (Title I)
4000, Student Learning Objectives and District Instructional Goals
4773, Diploma and Credential Options for Students with Disabilities
5500, Student Records
6700, Purchasing
9700, Staff Development

Ref:

The Individuals with Disabilities Education Act (IDEA), 20 USC §§1400 *et seq.* ;
34 CFR Part 300
Education Law Article 89, §§4401 *et seq.*
8 NYCRR Part 200
A.R. v. Connecticut State Board of Education, 5 F.4th 155 (2021)
Formal Opinion of Counsel No. 242 (7/6/2023), NYSED

Adoption date:

Adoption Date:

Classification:

Revised Dates: ;

GRADUATION CEREMONIES

(X) Required

- (X) Local
- (X) Notice

NEW NOTE: We suggest revisions to this policy to reflect the district's obligations to provide special education and related services to students with disabilities, as clarified by the State Education Department's Formal Opinion of Counsel No. 242, until the student's 22nd birthday. We have also taken the opportunity to suggest optional language regarding students with disabilities participating in graduation ceremonies, as well as other the ability of the district to set other conditions for participation which would apply to all students, consistent with state regulations. No changes to the administrative regulation are necessary.

NOTE: This policy, and the accompanying administrative regulation, to reflect the requirements of recently-enacted state law (Education Law §3204(4-b)) that school boards "establish a policy and adopt procedures" to allow students to participate in the graduation ceremony (and related activities) of their 9th grade cohort if they earn either a Career Development and Occupational Studies Commencement Credential (CDOS) or Skills and Achievement Commencement Credential (SACC). Please note that the CDOS can be earned by students with or without disabilities. This policy reflects those requirements.

The graduation or commencement ceremony is a time to celebrate the honors and achievements of the graduating class. The Board of Education will establish the date for graduation ceremonies, while the administration will determine the place and program details, including attire. Academic and other awards and scholarships may be presented along with diplomas. Speakers may be selected from among the graduating class **optional:** or others].

NEW NOTE: We have clarified the paragraph below regarding CDOS/SACC participation.

NOTE: We have not included a specific process for selecting graduation speakers, due to the wide variation in practices among schools. Such process does not need to be included in Board policy. Options include: designating the Valedictorian and/or Salutatorian; allowing the senior class to select one of their own; establishing a selection committee of staff members; designating the senior class president; allowing the senior class to choose someone from outside the school. Another consideration is prior review and approval of speeches by school administrators.

Participation in the graduation ceremony and related activities will be predicated on satisfactory completion of all graduation requirements, or as otherwise described in this policy. Exceptions may be made under extraordinary circumstances with the permission of the Superintendent of Schools. ~~A student who has~~ Students who have earned either a Career Development and Occupational Studies Commencement Credential (CDOS) or Skills and Achievement Commencement Credential (SACC) without meeting the requirements for a high school diploma by the time ~~his/her~~ their ninth-grade cohort reaches graduation may, but ~~is/are~~ is/are not required to, participate in that graduation ceremony and related activities.

NEW NOTE: We added the following paragraph to address the ability of the district to prohibit students from participating in graduation activities. The first sentence reflects a provision of state regulations which allows for students to be barred from the graduation ceremony and related activities. The second sentence covers other conditions for participation. Such other conditions that impact student participation in the graduation ceremony would apply to all students. The third sentence regarding notice is not required, but represents good practice, although if it is included in policy it must be followed. Some districts exclude students from graduation participation based on

attendance, disciplinary violations, unpaid fees or fines, or dress code violations. The district's Code of Conduct would likely address provisions for notice, opportunity to respond, and appeal.

However, students may be denied participation in the graduation ceremony and related activities as a consequence of violations of the Code of Conduct. The Building Principal may set other rules and conditions for participation in in the graduation ceremony and related activities. All such rules will be provided to students and parents/guardians in advance. Students who have met the requirements for a diploma but are barred from participating in the graduation ceremony will be given their diplomas separately.

NEW NOTE: While not required by law, the district may wish to address allowing students with disabilities to participate in the graduation ceremony with their 9th grade cohort without having earned a diploma or a CDOS/SACC. Because students with disabilities are entitled to special education services until their 22nd birthday, the district should consider scenarios under which a student participates in graduation and subsequently earns a CDOS/SACC/diploma, or completes their final year in school, all of which could be marked by participation in the graduation ceremony. The district could require students to choose one ceremony in which to participate. State law and regulations only require schools to permit students who have earned a CDOS/SACC to participate in the graduation ceremony of their ninth-grade cohort.

[Optional, select/modify as appropriate:] "Students with disabilities who have attended high school for four years, but who have not met the requirements for a CDOS/SACC/high school diploma, may participate in the graduation ceremony and related activities with their ninth-grade cohort, and receive a certificate of attendance and/or course completion and any other awards they have earned. Such students who subsequently meet the requirements for a CDOS, SACC, or high school diploma may participate in the graduation ceremony of that graduating class. Students with disabilities who have not previously participated in a graduation ceremony may do so at the end of their final year in school."

NEW NOTE: We have suggested changes below to improve clarity.

NOTE: The law does not specify how to address students who participate in the graduation ceremony by earning a CDOS/SACC only, and subsequently earn a diploma. We have included the optional paragraph below to reflect that a student who earns a diploma may participate in graduation ceremonies. Alternately, the Board could limit a student's participation to one graduation ceremony. In that case, use the following text instead: "Under this policy, students are allowed to participate in only one graduation ceremony, upon earning either a CDOS/SACC or a high school diploma."

[Optional language: ~~If a student who participates~~Students who participate in the graduation ceremony by earning only a CDOS or SACC ~~only subsequently meets, who subsequently meet~~ the requirements for either a Regents or local high school diploma, ~~he/she~~ may participate in the graduation ceremony of that graduating class as well.

NEW NOTE: We have updated the language below to clarify the district's obligations to provide special education services for students with disabilities until their 22nd birthday, and to broaden the language to cover other scenarios under which a district might permit other graduation ceremony participation for students with disabilities.

~~A student with a disability who participates~~Students with disabilities who participate in graduation ceremonies by earning only a CDOS or SACC is without receiving a diploma are entitled to continue his/her/their educational program/programs until the end of school year in which the student turns 21 years old their 22nd birthday, or until he/she earns receipt of a Regents or local high school diploma, whichever comes first.

NOTE: Usually, the Superintendent is charged to develop, approve, and promulgate regulations, which Boards usually do not adopt. However, under this law, Boards are required to adopt procedures to effectuate this policy.

The law also requires annual written notice to all students and their parents/guardians about the district's policy and procedures.

The Board directs the Superintendent ~~shall~~to develop regulations to implement this policy, to be adopted by the Board. The district ~~shall~~will provide annual written notice to all students and their parents/guardians of the requirements of this policy and associated regulations.

NEW NOTE: We have added a cross-reference to the Code of Conduct, citations to the applicable Commissioner's regulation on graduation participation, as well as the Second Circuit A.R. v. Connecticut case and the SED Formal Opinion of Counsel.

Cross-ref:

4321, Programs for Students with Disabilities Under the IDEA and New York's Education Law Article 89
4321.9, Declassification of Students with Disabilities
4773, Diploma and Credential Options for Students with Disabilities
5300, Code of Conduct

Ref:

Education Law §3204(4-b)
8 NYCRR §§100.2(oo); 100.5; 100.6
A.R. v. Connecticut State Board of Education, 5 F.4th 155 (2021)
Formal Opinion of Counsel No. 242 (7/6/2023), NYSED

Adoption date:

Adoption Date:

Classification:

Revised Dates: ;

(X) Required
(x) Local
(x) Notice

GRADUATION CEREMONIES REGULATION

Participation by Earning a CDOS or SACC

NOTE: Education Law §3204(4-b)) requires that school boards “establish a policy and adopt procedures” to allow students to participate in the graduation ceremony and related activities of their 9th grade cohort, if they have earned a CDOS or SACC. We have developed this sample regulation as a procedure for the district’s consideration. The provisions of the new state law go into effect February 27, 2018, applicable to the graduating class of 2018. Your district may find that the procedures necessary to effectuate the law must begin by a certain time of year.

A student who has earned either a Career Development and Occupational Studies Commencement Credential (CDOS) or a Skills and Achievement Commencement Credential (SACC), but not a high school diploma, shall be allowed to participate in the graduation ceremony and related activities of the student’s graduating class.

The district shall retain a record of each student’s ninth grade cohort. Each year, the High School Building Principal [*or insert appropriate title*] shall determine whether each student who entered ninth grade with the current year’s graduating class is eligible to participate in that year’s graduation ceremony, pursuant to state law, Board policy and this regulation.

During the school year in which the ninth grade cohort enters twelfth grade, the High School Building Principal [*or insert same title as above*] shall submit to the Superintendent of Schools or designee the name(s) of all students who are on track and expected to earn either a CDOS or SACC, but not a Regents or local high school diploma, by the time of graduation.

For each student so identified, the Superintendent or designee shall ascertain whether the student wishes to participate in the graduation ceremonies and related activities of that year’s graduating class by discussing the matter with the student and/or parent/guardian either in person, in writing, by telephone, or via email.

For any student who meets such requirements and wishes to participate in the graduation ceremony and related activities, the Superintendent shall ensure, prior to graduation, that the High School Building Principal, the student, and his/her parent(s)/guardian(s) are notified that the student may participate in that year’s graduation ceremony and related activities, and shall ensure his/her participation is facilitated.

NOTE: The law requires annual written notice to all students and their parents/guardians about the district’s policy and procedures.

The district shall provide annual written notice to all students and their parents/guardians of the requirements of this regulation and associated policy.

Adoption date:

TRANSPORTATION FOR NONPUBLIC SCHOOL STUDENTS

- Required
- Local
- Notice**

NOTE: We have suggested the underlined language to outline the district's responsibilities for transporting resident students attending nonpublic schools. The sentence in the first paragraph about transportation on days when public school is not in session is consistent with guidance from the NYS Education Department and affirmed in a 2022 court case. The district may, but is not required to, provide such transportation.

The district is required to provide transportation to nonpublic school students residing in the district to and from the nonpublic school they attend. This transportation will be within the same mileage limitations established for resident students attending district schools. Parents must submit a written request to the Director of Transportation. The district is not required to provide transportation on days when the public schools are not in session.

Transportation requests for students attending nonpublic schools should be received by the district no later than the April 1st preceding the beginning of the next school year. If a student moves into the district later than April 1st, the request should be received within thirty days of establishing residence in the district, but preferably no later than August 1st.

All late requests, however, shall be considered by the Board of Education on the basis of each case's merits. Late requests will be honored if there is a reasonable explanation for the delay as determined by the Board, or if the transportation will not result in additional costs to the district.~~Criteria used by the Board in judging whether to accept a late request may include but not be limited to the following:~~

- ~~1. whether transportation will require an additional cost, and, if so,~~
- ~~2. the reasonableness of the excuse for the late request.~~

Reasonable explanations for delays include lateness due to actions by the nonpublic school, or dates of CSE/CPSE annual review meetings which impact parental decisions. Reasonable excuses do not include personal hardship, ignorance of the deadlines, belated parental decisions, or a change in nonpublic school after the deadline.

The district may require nonpublic school students to walk to pick-up points up to the same distance as district students. The district may also transport students to nonpublic schools by utilizing centralized transfer points. If the district provides transportation to students who live within the mileage limitations and attend a particular nonpublic school, the district will designate one or more public schools as a centralized pick-up points to provide transportation to any students living outside the mileage limitations who attend that school. The district may provide transportation to the centralized pick-up point for students who live along an established route to the pick-up point, as long as it does not result in additional costs to the district.

Optional language: The district may provide transportation to nonpublic school students living more than 15 miles from their nonpublic school via a centralized pickup point that is within 15 miles from the nonpublic school, if the district has provided transportation to that school in at least one of the three prior years.]

Cross-ref:
1740, Relations with Nonpublic Schools

Ref:
Education Law §3635
Appeal of Boyle, 31 EDR 208 (1991)
Matter of Ward, 29 EDR 153 (1989)
Matter of Alletto, 25 EDR 14 (1985)
United Jewish Cmty. of Blooming Grove v. Washingtonville Cent. Sch. Dist., 2022 N.Y. Slip Op. 3566 (2022)
Transportation for Students Enrolled in Nonpublic Schools: Handbook on Services to Pupils Attending Nonpublic Schools, NYSED, www.p12.nysed.gov/nonpub/handbookonservices/transportation.html

Adoption date:

Adoption Date:
Classification:
Revised Dates: ;

NYSSBA Sample Policy

ALCOHOL AND DRUG TESTING OF DRIVERS

- (X) Required**
- (X) Local**
- (X) Notice**

NEW NOTE: Federal regulations now permit drug testing on oral fluid samples, in addition to urine. No changes to this policy are necessary regarding the addition of oral fluid specimens, as specimen types are only addressed in the accompanying regulation and not this policy. However, we have added a paragraph regarding required queries of the federal Clearinghouse, in addition to using gender neutral language and changing "shall" to more reader-friendly language.

NOTE: This sample policy and accompanying regulation reflect the district's obligations under federal regulations for drug and alcohol testing for bus drivers, as well as certain other employees specified in federal regulations. It also reflects similar and expanded state requirements. Vehicle and Traffic Law sections 509-g and 509-l requires "motor carriers" (bus operators including school districts and private school bus companies) to perform pre-employment and random drug and alcohol testing on anyone who operates a "school bus."

Under state law, "school bus" includes an expansive set of vehicles (i.e., any vehicle that transports students, children of students, teachers, or supervisory staff to and from school or school events) as compared to federal law (i.e., only vehicles that transport 16 or more people or are 26,001 pounds or more). Motor carriers are prohibited from requiring or allowing any driver to operate a school bus if that person appears to have consumed alcohol or controlled substances within the past eight (8) hours (this was previously 6 hours, in line with federal regulations).

If your district does not employ any personnel who fit the definition of a "driver" under federal law or an operator of any "other school bus" under state law (see second paragraph in the policy), this policy would not be required. Instead, the district could use the following language in place of this entire policy and regulation:

"The Board of Education recognizes the dangers inherent in alcohol and controlled substance use by employees especially those in safety-sensitive positions. To ensure the safety of its students and to comply with federal regulations, any company contracting with the district to provide transportation to district students is responsible for conducting alcohol and drug testing required under federal law and regulations."

The Board of Education recognizes the dangers inherent in alcohol and controlled substance use by employees, especially those in safety-sensitive positions. To ensure the safety of its students the Board requires alcohol and controlled substance testing of certain "drivers," operators of "other school buses," and any other employee who is subject to such testing, in accordance with and as set forth in the applicable federal and state requirements.

Definitions

1. "Driver" includes any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.
2. "Other school buses" include those covered by applicable federal regulations (see list below) and any other motor vehicle either owned by the district or by a private company, operated to transport students, children of students, teachers, and other supervisory persons to or from school or school activities.

Testing Responsibilities

NOTE: Federal regulations and state law impose upon school districts varying responsibilities regarding the testing of school bus drivers and operators of other school buses for use of controlled substances and alcohol. State law requires that school districts conduct alcohol and controlled substances testing prior to employment and randomly for drivers of vehicles covered by federal regulation, as well as operators of other school buses. Federal regulations require pre-employment controlled substances testing, random testing, reasonable suspicion, post-accident and return to duty testing for drivers of vehicles listed under federal regulations (see list below).

Consistent with federal regulations, the district ~~shall~~will directly, by contract, or through a consortium, implement and conduct a program to provide alcohol and controlled substance testing of drivers who operate a commercial motor vehicle, perform in a safety-sensitive position, and are required to hold a commercial driver's license. Employees holding such positions include:

1. drivers of vehicles designed to transport 16 or more passengers, including the driver;
2. drivers of commercial motor vehicles whose manufacturer's rating is 26,001 lbs. or more; or
3. any other employee who may drive or service a listed vehicle (e.g., a mechanic who performs test drives, repairs, inspects, or loads or unloads a vehicle listed in 1 or 2 above).

Controlled substance and alcohol tests will be conducted for operators of all "other school buses" consistent with the procedures applicable to the implementation of federal regulations. Volunteers who drive a bus with passengers fewer than 30 days per year are not subject to such testing.

Generally, the required testing will be conducted at or prior to the time of employment and randomly throughout the school year. However, drivers are subject to additional testing under federal regulations when a supervisor has a reasonable suspicion that a driver has engaged in prohibited alcohol or controlled substance use; after certain accidents; prior to return to duty when the driver has been found to violate district policy and federal regulations; and after the driver's return to duty.

Driving Prohibition

In accordance with federal and state law, a ~~driver~~drivers may not drive if ~~he or she~~they:

1. ~~possesses, consumes or is~~ possess, consume, or are reasonably believed to possess or have consumed alcohol or a controlled substance, while on duty;
2. ~~uses or is~~ use or are under the influence of alcohol or a controlled substance that is not lawfully prescribed within six hours or less before duty;
3. ~~has~~ have an alcohol concentration of 0.02 or higher, or ~~tests~~test positive for a controlled substance; or
4. ~~refuses~~refuse to take a required alcohol or controlled substance test.

Also, no driver ~~shall~~ is permitted to use alcohol after being involved in an accident in which there was a fatality or in which the driver was cited for a moving violation and a vehicle was towed from the scene or an injury was treated away from the scene until ~~he/she has~~ they have been tested or 8 hours have passed, whichever occurs first.

Enforcement of Driving Prohibitions

The school district will not require or permit drivers of vehicles listed above, as well as operators of all "other school buses" defined above, to be on duty or operate a listed vehicle or other school bus, if it appears that they have consumed a drug/controlled substance (except those lawfully prescribed) or alcohol within the preceding eight hours. This ~~shall~~will be based on the person's general appearance, conduct, or other substantiating evidence. Those who maintain, repair, or garage listed vehicles or school buses that involves incidental driving without passengers, are exempt from this requirement, but are still prohibited from consuming controlled substances and alcohol within six hours of going on duty.

Response to Positive Testing Results

Any driver who is tested and found to have an alcohol concentration of at least 0.02, but less than 0.04, ~~shall~~will be removed from the position until ~~his or her~~their next regularly scheduled duty period, but not less than 24 hours following administration of the test. Any driver found to have violated this requirement may be disciplined in accordance with the provisions of the applicable collective bargaining agreement, district policy, and/or law. Operators of "other school buses" subject to random testing pursuant to New York Law will be subject to the same consequences based upon an alcohol concentration of at least 0.02 but less than 0.04 as drivers listed above.

If a driver has an alcohol concentration of 0.04 or greater, or has engaged in prohibited alcohol or controlled substance use, ~~he or she~~they will be removed from driving duties, and referred to a substance abuse professional. The driver may be required to complete a treatment program and/or be disciplined pursuant to district policy and/or collective bargaining agreement. No driver who has abused controlled substances and/or alcohol may return to duty unless ~~he/she has~~they have successfully passed a required return to duty test. Thereafter, the driver will be subject to follow-up testing. Operators of "other school buses" subject to random testing pursuant to New York Law will be subject to the same consequences based upon an alcohol concentration of 0.04 or greater or a positive drug test as drivers listed above.

Re-Testing

NOTE: Occasionally, districts may be notified that an individual's drug test result is negative but dilute (i.e., contains an excess of fluids – the cause may be legitimate such as drinking too much water or it may be the result of deliberate sabotage). If the district wishes to retest dilute specimens, include the following paragraph making appropriate selections for the types of testing you wish to include (e.g., pre-employment, return-to-duty, etc.).

Should the district receive a dilute test result in which the creatinine concentration is greater than 5mg/dL in the case of any pre-employment, return-to-duty, follow-up, reasonable suspicion, or random test, it is the policy of the district that the individual ~~shall~~will be re-tested and that re-test will become the test of record.

NOTE: Federal regulations do require that dilute tests within a certain range be automatically retested. In the sample paragraph above we are addressing those dilute tests which fall outside of that range but which the district may wish to follow-up on to further ensure the validity of the test and provide for a greater assurance of safety. The district may elect to do nothing with regard to dilute tests and simply accept the result as is – i.e., a negative result. In that case, no statement need be made in policy.

If, however, the district wishes to retest, then you must specify the circumstances under which you wish to retest (i.e., pre-employment, follow-up testing, etc.). Please note that the regulations require that you treat all individuals the same for this purpose and that you must inform individuals in advance of your decision on these matters. The BOCES Health and Safety Services group has recommended that districts retest in three areas: pre-employment, return-to-duty and follow-up testing. The sample paragraph above has been drafted to require retesting for all individuals in all five areas. Please modify to reflect your district's intended practice.

Districts should also note that there is a charge for the re-tests and decide who will bear the additional expense.

Federal Drug and Alcohol Clearinghouse Queries and Reporting

In addition to the required testing, for employees covered under federal law, the district will also conduct required pre-employment and annual queries of the Department of Transportation's Federal Motor Carrier Safety Administration Drug and Alcohol Clearinghouse for drug and alcohol violations. The district will conduct full queries when limited query results show a record of violations. The district will also report the required information to the Clearinghouse regarding test results and drug and alcohol use.

Policy Distribution

The Superintendent of Schools ~~shall~~will ensure that a copy of this policy, the district's policy on misuse of alcohol and use of controlled substances, information on alcohol and drug abuse and treatment resources and any other information prescribed by federal regulations is provided to all drivers and operators of "other school buses" prior to the initiation of the testing program and to each driver or operator of "other school buses" subsequently hired or transferred to a position subject to testing.

Cross-ref:

9320, Drug-Free Workplace
9610, Staff Substance Abuse

Ref:

Omnibus Transportation Employee Testing Act of 1991, 49 U.S.C. §§31136; 31306
49 U.S.C. §521(b)
49 CFR Part 391 (Qualifications/Disqualifications)
49 CFR Part 382 (Drug and Alcohol Testing Requirements)
49 CFR Part 40 (Testing Procedures)
49 CFR §395.2 (On-duty time defined)
Vehicle and Traffic Law §§509-g; 509-l; 1192; 1193
Will v. Frontier CSD Bd. of Educ., 97 N.Y.2d 690 (2002)

Adoption date:

Adoption Date:
Classification:
Revised Dates: ;

ALCOHOL AND DRUG TESTING OF DRIVERS REGULATION

NOTE: We have updated this regulation to address federal regulations permitting the use of oral fluid samples for drug testing, to address adult-use cannabis and potential effects of using CBD, and to reference the federal clearinghouse.

This regulation addresses alcohol and drug testing pursuant to the varying responsibilities under federal and state law. NYS Vehicle and Traffic law requires school districts to carry out testing beyond that required by federal law and regulations. Additionally, the regulation reflects requirements under federal regulations and highlights the dichotomy between federal and state law with respect to use of medical and adult use cannabis.

Any employee who operates a commercial motor vehicle, or other “school bus,” or is in a related safety-sensitive function described below shall ~~be~~ is subject to alcohol and controlled substance testing in accordance with this regulations and applicable federal regulations and state law. An employee having any questions concerning the district’s policy or regulation, state law or applicable federal regulations shall ~~be~~ are to contact the Superintendent of Schools.

Any treatment, rehabilitation program or discipline will be provided in accordance with district policy and/or collective bargaining agreements.

I. Definitions

1.

A. Employees Covered Under Federal Law

Employees covered under federal law include district employees who operate a commercial motor vehicle, perform in a related safety-sensitive position, and are required to obtain a commercial driver’s license. Such employees include:

1. drivers of vehicles designed to transport 16 or more passengers, including the driver;
2. drivers of commercial motor vehicles whose manufacturer’s rating is 26,001 lbs. or more; or
3. any other employee who may drive or service a vehicle listed in 1 or 2 above (e.g., a mechanic who performs test drives, repairs, inspects or loads or unloads a listed vehicle).

Such employees include, but are not limited to full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed or under lease to an employer or who operate a commercial motor vehicle at the direction or with the consent of the district.

B. Employees Covered Under State Law

Operators of “other school buses” are subject to testing as described in section III below. “Other school buses” include both those covered by applicable federal regulations as stated above, and any other motor vehicle either owned by the district or by a private company, operated to transport students, children of students, teachers, and other supervisory persons to or from school or school activities.

Certain specified employees will not be considered operators of "other school buses." They include:

1. Volunteers who drive a school bus with passengers fewer than 30 days per year; and
2. Employees engaged in the maintenance, repair or garaging of buses, who in the course of their duties must incidentally drive a vehicle not covered under federal law without passengers.

C. Safety Sensitive Function

An employee is performing a safety-sensitive function that is covered by federal regulations when:

1. waiting to be dispatched, unless the driver has been relieved from duty;
2. inspecting, servicing or conditioning any commercial motor vehicle;
3. driving a commercial motor vehicle;
4. attending a vehicle being loaded or unloaded;
5. performing the driver requirements of the federal regulations pertaining to accidents; and
6. attending to a disabled vehicle.

II. Driver Prohibitions and Consequences

Employees covered under federal law are required to be in compliance with district policy and regulation at the following times:

1. when performing any on-duty safety-sensitive functions, including all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility; and
2. during all time spent providing a breath sample, saliva/oral fluid sample or urine specimen and travel time to and from the collection site in order to comply with random, reasonable suspicion, post-accident, return-to-duty or follow-up testing.

Employees covered under both federal and state law are prohibited from driving a listed vehicle or performing other safety-sensitive duties if the employee:

1. possesses, consumes or is reasonably believed to possess or have consumed alcohol or a controlled substance, while on duty;
2. has consumed or is under the influence of alcohol or a controlled substance that is not lawfully prescribed within six hours before duty;
3. has an alcohol concentration of 0.02 or higher, or tests positive for controlled substances; or
4. refuses to take a required alcohol or controlled substance test. Refusal to submit ~~shall~~ will mean the failure to provide adequate breath, saliva/oral fluid or urine without a valid medical explanation, receipt of verified adulterated or substituted drug test result, or to engage in conduct that clearly obstructs the testing process, such as a failure to arrive for the drug testing or failure to sign the alcohol testing form prior to specimen collection.

In addition, an employee covered under federal law is prohibited from consuming alcohol within eight hours after being involved in an accident, or before undergoing a post-accident test, if such a test is required. Illegal drug use by drivers is prohibited on or off duty.

Drivers who violated the above prohibitions will be subject to the following enforcement actions:

1. Employees covered under federal law will be removed from their safety-sensitive functions if they violate the district's policy or federal regulations pertaining to the possession or consumption of alcohol or controlled substances.
2. The Supervisor of Transportation or ~~his/her~~ designee will not require or permit employees covered under state law to be on duty or operate a listed vehicle or other school bus, if it appears that they have consumed a drug/controlled substance (except those lawfully prescribed) or alcohol within the preceding eight hours. This ~~shall~~ will be based on the person's general appearance, conduct, or other substantiating evidence. Those who maintain, repair, or garage listed vehicles or school buses that involves incidental driving without passengers, are exempt from this requirement, but are still prohibited from consuming controlled substances and alcohol within six hours of going on duty.
3. ~~Any covered employee who tests~~ Covered employees who test 0.02 or greater but less than 0.04 will be removed from driving and other safety-sensitive duties until the start of ~~the driver's~~ their next regularly scheduled duty period, but not less than 24 hours following administration of the test.
4. In the event that any covered employee has a breath alcohol concentration of 0.04 or greater, has tested positive for a controlled substance or has refused to take a test, ~~he or she~~ they will, in addition to immediate removal from driving and any other safety-related duties, not be returned to duty until ~~he or she~~ they have:
 - ~~has~~ been evaluated by a substance abuse professional;
 - ~~has~~ complied with any treatment recommendations; and
 - ~~has~~ received a satisfactory result from a return to duty test.
5. Upon return to duty, the employee will be subject to follow-up testing.

While New York Law permits the use of medical and adult-use cannabis, marijuana is still a controlled substance under federal law ~~still prohibits its use and its use is still prohibited and tested for in covered employees~~. Any driver tested under the federal regulations, who tests positive for marijuana, even if such use is based upon a lawful certification or lawful use under state law, will be found to have violated the federal regulations (DOT Office of Drug and Alcohol Policy and Compliance, Medical Marijuana Notice (Oct. 2009) at: <https://www.transportation.gov/odapc/medical-marijuana-notice>).

Additionally, employees are cautioned that while cannabidiol (CBD) is not tested for under federal regulations, CBD products may contain tetrahydrocannabinol (THC), and CBD use may result in a positive test for marijuana if it contains more than 0.3% of THC. There is no FDA oversight to ensure that CBD products are accurately labeled. CBD use is not recognized as a legitimate medical explanation for a positive THC result.

III. Types of Testing

The Superintendent of Schools and the Director of Transportation ~~shall~~ will ensure that the following alcohol and drug tests are conducted and that any employee who is required to take such a test is notified prior to the test that it is required pursuant to federal regulations. Notice will also be given in the case of pre-employment alcohol testing, that such test is required by state law.

NOTE: While federal regulations give employers the option to require pre-employment alcohol testing as part of district policy, they require pre-employment testing only for controlled substances. In comparison, state law makes both pre-employment alcohol and controlled substance testing mandatory for all employees covered under both federal law and state law.

1. Pre-employment: Controlled substance and alcohol tests will be conducted before all applicants are hired or after an offer to hire, but before actually performing safety-

sensitive functions for the first time. These tests will also be given when employees covered under federal or state law transfer to a safety-sensitive function.

2. Post-accident: Alcohol and controlled substance tests will be conducted if a driver covered under federal law is involved in an accident in which:
 - a. there has been a fatality; OR
 - b. the driver has received a citation for a moving violation in connection with the accident pursuant to the time limitations specified in the regulation AND EITHER
 1. there is an injury treated away from the scene of the accident; or
 2. there is a disabled vehicle towed from the scene.
3. Reasonable Suspicion: Alcohol and controlled substance tests will be conducted when the Transportation Supervisor or other school official who has completed the minimum two hours of training has a reasonable suspicion that the driver covered under federal law has violated district policy and regulation. A "reasonable suspicion" must be based on specific, contemporaneous, articulable observations concerning the driver's behavior, appearance, speech or body odors that are characteristic of controlled substance or alcohol misuse. Alcohol tests can only be done just before, during or just after the employee covered under federal law drives a listed vehicle or performs other safety-sensitive duties. The supervisor who makes the determination of reasonable suspicion cannot do the testing.
4. Random Testing: For employees covered under federal law, random alcohol tests ~~shall~~ will be conducted annually at a minimum rate established annually by the Federal Motor Carrier Safety Administration. Random alcohol tests must be conducted just before, during or just after the employee drives a listed vehicle or performs other safety-sensitive duties. For employees covered under federal law, random controlled substance tests ~~shall~~ will be conducted annually at a minimum rate established annually by the Federal Motor Carrier Safety Administration. Random controlled substance tests may be conducted at any time. Random alcohol and controlled substance tests must be unannounced and spread reasonably throughout the calendar year.

New York law requires employees covered by state law to be tested in conformance with federal regulations 49 CFR Part 382. Although federal regulations permit employers to perform random testing beyond what they require, a separate pool must be maintained for those employees covered by state law who do not meet federal requirements. The separate pool for these employees will be subject to testing at the same minimum rate annually established for drivers subject to the Federal Motor Carrier Safety Administration regulations.
5. Return-to-Duty Testing: Any covered employee who refused to take a test or has engaged in prohibited alcohol and controlled substance use, except for alcohol concentration of between 0.02 and 0.04, ~~shall be is~~ required to take an alcohol or controlled substance test and achieve a satisfactory result before returning to duty in the safety-sensitive position. If removal was due to alcohol use, a satisfactory result will be less than 0.02 alcohol concentration. If removal was due to controlled substance use, a satisfactory result will be one that it is verified as negative. The test will not be administered until the employee has been evaluated by a substance abuse professional and has complied with any treatment recommendations.
6. Follow-Up Testing: After any covered employee who was found to violate the district's policy against alcohol and controlled substance use returns to duty, ~~he or she~~ they will be subject to at least six unannounced tests in the first 12 months following the employee's return to duty. Follow-up testing may be extended for up to 60 months from the date of the employee's return to duty. Follow-up alcohol testing may only be conducted before, during or after the driver has performed ~~his or her~~ driving duties.

IV. Testing Procedures

A. Alcohol Testing Procedures

Alcohol testing will be conducted with evidential breath testing (EBT) devices approved by the National Highway Traffic Safety Administration. An approved non-evidential screening device (on breath, blood or saliva) may be used to perform screening tests but not for confirmation alcohol tests. The employee and the Breath Alcohol Technician conducting the test must complete the alcohol testing form to ensure that the results are properly recorded.

1. Two breath tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a "negative" test.
2. If the alcohol concentration is 0.02 or greater, a second or confirmation test must be conducted. The confirmation test must be conducted using an EBT that meets the requirements of federal regulations.
3. If the confirmation test results indicate an alcohol concentration from 0.02 to 0.03999, the employee will be restricted from duty for at least 24 hours from the time of the test.
4. If the confirmation test results indicate an alcohol concentration equal to or greater than 0.04, the employee will be removed from all safety-sensitive duties and no return to duty will be permitted until the employee has successfully passed required return-to-duty tests. The employee must also be reviewed by a Substance Abuse Professional and comply with his/her/their recommendations. Follow-up tests will also be required.
5. For post-accident testing, the results of breath or blood tests conducted by law enforcement officials will be accepted as long as the testing conforms with federal and state requirements for alcohol testing and the results are made available to the district.

All testing procedures will conform to the requirements outlined in federal regulations (49 CFR Part 40) for ensuring the accuracy, reliability and confidentiality of test results. These procedures include training and proficiency requirements for Breath Alcohol Technicians, quality assurance plans for the EBT devices including calibration, requirements for suitable test location, and protection of employee test records.

B. Drug Testing Procedures

NEW NOTE: Districts have the option to allow drug testing via oral fluid samples. Oral fluid testing is required for direct observation where a same-gender observer is unavailable, or the employee is non-binary or transgender. While not addressed by the federal regulations, the district could set other rules, such as: (1) use one type of specimen for all testing scenarios (except as noted above); (2) use oral fluid specimens for all direct observation collection; (3) use urine specimen as a default, and oral fluid as backup for instances where there is an insufficient quantity of specimen, or where the urine specimen temperature is outside the acceptable range; (4) use urine specimens for some types of testing (e.g., return-to-duty) and oral fluid specimens for other types of testing (e.g., follow-up); or (5) allow the employee to choose the type of specimen. The type of testing will also depend on whether a collection site offers both types of testing. The district should establish its options here.

The employee must provide a urine or oral fluid specimen at a collection site that meets federal requirements which will be analyzed at a laboratory certified and monitored by the U.S. Dept. of Health and Human Services. Oral fluid will be used for direct observation if a person of the same gender is not available to do the observation, or for nonbinary or transgender individuals. **Insert other conditions for urine/oral fluid specimens as appropriate.**

NOTE: Item 2 below mirrors the language of the federal regulations 49 CFR §40.82. The term "opioid" is not defined in federal regulations, so we have included the specific substances to be tested. The

term "drug metabolite" is not defined in federal regulations, so we have included a definition of common understanding. Methamphetamines, MDA and MDMA were previously tested for under the "Amphetamine" category, but we suggest including them in the listing below to give additional notice.

1. Regulations require that each ~~urine~~ specimen be divided into one "primary" specimen and one "split" specimen.
2. All ~~urine~~ specimens are analyzed for the following drugs or drug metabolites (by-products of the body metabolizing a drug):
 - a. Marijuana (metabolites)
 - b. Cocaine metabolites
 - c. Amphetamines (including methamphetamines, MDA and MDMA)
 - d. Opioids (including natural opiates such as codeine, morphine, heroin, and semi-synthetic opioids such as hydrocodone, hydromorphone, oxycodone, and oxymorphone)
 - e. Phencyclidine (PCP)
3. If the primary specimen confirms the presence of one or more of these drugs, the employee has 72 hours to request that the split specimen be sent to another certified lab for analysis. [Note: The employee must be removed from driving duties at this time--pursuant to federal regulations; the driver's removal cannot await the result of split sample.]
4. All drug test results will be reviewed and interpreted by a physician (also called a Medical Review Officer) before they are reported to the district.
5. If the laboratory reports a positive result to the Medical Review Officer (MRO), the MRO ~~shall~~ will interview the employee to determine if there is an alternative medical explanation for the drugs found in the employee's ~~urine~~ specimen. If the employee provides appropriate documentation and the MRO determines that it is legitimate medical use of a prohibited drug, the drug test result is reported as negative.
6. If the MRO reports a positive drug result, the employee must be evaluated by a substance abuse professional and follow ~~his/her~~ their recommendations prior to taking a return-to-duty test. Follow-up testing is also required.
7. For post-accident testing, the results of ~~urine~~ drug tests conducted by law enforcement officials will be accepted as long as the testing conforms with federal and state requirements for controlled substance testing and the results are made available to the district.

All controlled substance testing ~~shall~~ will comply with the requirements of the federal regulations (49 CFR Part 40) including procedures for the proper identification, security and custody of the sample, use of certified laboratories, that all drug test results are reviewed and interpreted by a physician, and ensuring confidentiality of employee test records.

V. Dilute Specimen Testing

NOTE: If the district wishes to retest dilute specimens, include the following section V., making appropriate selections for the types of testing you wish to include (e.g., pre-employment, return-to-duty, etc.). This section has been drafted to require retesting for individuals in all five areas. If retesting is required, the individual must be given minimum possible notice and the result of the second test becomes the test of record. If the individual refuses to take the re-test, it will be considered a positive result.

If the district receives a drug test result which is negative but dilute and the creatinine concentration is greater than 5mg/dl, the district ~~shall~~ will require a re-test to be conducted in each of the following cases:

- Pre-employment tests
- Return-to-duty tests

- Follow-up tests
- Reasonable suspicion tests
- Random tests

The result of the re-test ~~shall~~ will become the test of record. If the employee refuses to take the re-test it will be considered the same as a positive test result.

VI. Training

The Supervisor of Transportation and every other person designated to determine whether reasonable suspicion exists to require an employee covered by federal law to undergo reasonable suspicion testing must receive at least one hour of training on alcohol misuse and at least one additional hour of training on controlled substance use which they will use in making their determinations.

VII. Federal Drug and Alcohol Clearinghouse Queries

NOTE: We have added this section to address the district's responsibilities for conducting pre-employment and annual queries of the federal Department of Transportation's Drug and Alcohol Clearinghouse required by federal regulations 49 CFR §382.701. Employees must specify the time frame for which consent to query is granted. A consent period of one year will allow the district to conduct limited queries for the year.

The district will conduct queries of the Department of Transportation's Federal Motor Carrier Safety Administration Drug and Alcohol Clearinghouse for all employees covered under federal law: (1) full queries to check if prospective employees are prohibited from performing safety-sensitive functions, such as operating school buses, due to unresolved drug and alcohol program violations, and (2) limited queries annually (once in a 365-day period), for all employees subject to state and federal drug and alcohol testing. The district may conduct queries at other times as needed.

All queries require driver consent. The district will request employee consent to conduct limited queries of the Clearinghouse. If a limited query result shows that a record is found in the Clearinghouse, the district will request the driver's consent for a full query.

Full query results will show if a driver is prohibited or not prohibited from performing safety-sensitive functions. If a query shows a violation, the district must verify that the driver has completed the Substance Abuse Professional's return to duty process before allowing the employee to perform any safety-sensitive function. In some cases, when hiring, the district may inherit an ongoing follow-up testing process.

VIII. Recordkeeping and Reporting

NOTE: Retainment of records of employees covered under federal law is addressed in federal regulations. Retainment of records of employees covered under state law is covered by Schedule LGS-1.

The Transportation Supervisor ~~shall~~ will ensure that alcohol and drug testing records are maintained pursuant to applicable regulation and are available, if requested, for submission to the federal government or any State or local officials with regulatory authority over the employer or any of its drivers.

NOTE: Federal regulations (49 CFR §382.601) require employers to notify employees of the information that must be reported to the Department of Transportation Clearinghouse.

The following personal information must be reported to the Department of Transportation (DOT) Federal Motor Carrier Safety Administration Drug and Alcohol Clearinghouse for employees subject to DOT testing:

- a verified positive, adulterated or substituted drug test result;
- an alcohol confirmation tests with a concentration of 0.04 or higher;
- a refusal to submit to any test required by the regulations;
- An employer's report of actual knowledge of on duty alcohol use, pre-duty alcohol use, alcohol use following an accident, and controlled substance use;
- A substance abuse professional's report of the successful completion of the return-to-duty process;
- A negative return-to-duty test; and
- An employer report of completion of follow-up testing.

NOTE: Provisions of federal law prohibit the use of federal forms produced by the Department of Transportation (DOT) for alcohol and controlled substance testing for non-DOT testing. Therefore, school districts must utilize different forms when testing employees as required by New York law, who are not subject to testing under the federal regulations. Additionally, it is advisable for districts to segregate the testing records for those required to be tested under federal law from those required to be tested based upon state law.

VIII. Required Notification

Every covered employee ~~shall~~will receive information about the signs, symptoms, and effects of alcohol misuse and controlled substance use as well as a copy of the district's policy and procedures, the consequences of testing positive and who to contact within the district to seek further information and/or assistance.

Each covered employee is required to sign a statement certifying that ~~he/she has~~they received this information. The district ~~shall~~will maintain the original signed certification until the employee's employment is discontinued. The district will provide a copy of the certification to the covered employee upon request.

IX. Penalties

Any treatment, rehabilitation program or discipline will be provided in accordance with applicable law and regulations, district policy and/or collective bargaining agreements.

Any employer or driver who violates the requirements of the federal regulations of the Omnibus Transportation Employee Testing Act of 1991 may be subject to civil penalties.

In addition, in accordance with New York State law, a driver convicted of driving a listed vehicle with one or more student passengers while impaired by the use of drugs or alcohol will have ~~his/her~~their license revoked for one year and is subject to fines ranging from \$500 to \$5,000 and/or imprisonment. Any driver convicted more than once in 10 years for such crimes will have ~~his/her~~their license revoked for three years and is subject to a fine of \$1,000 to \$5,000 and/or imprisonment.

Adoption date:

Adoption Date:

Classification:

Revised Dates: ;

NYSSBA Sample Policy

ALCOHOL AND DRUG TESTING EXHIBIT

General Consent for Limited Queries of the Federal Motor Carrier Safety Administration (FMCSA) Drug and Alcohol Clearinghouse

NOTE: This sample form was adapted from one developed by the Federal Motor Carrier Safety Administration (FMCSA). The FMCSA does not require that motor carrier employers subject to the Agency’s drug and alcohol use and testing regulations in 49 CFR Part 382 use this sample format to obtain an employee’s consent to conduct a limited query of the Drug and Alcohol Clearinghouse. Employers may, however, use or adapt the content as they see fit. Note that consent for limited queries is provided outside the Clearinghouse, whereas consent for full queries (including pre-employment queries) is provided electronically within the Clearinghouse.

I, _____ (Driver Name), hereby provide consent to the _____ School District (“the District”) to conduct a limited query of the FMCSA Commercial Driver’s License Drug and Alcohol Clearinghouse (Clearinghouse) to determine whether drug or alcohol violation information about me exists in the Clearinghouse.

NOTE: Employers and employees may also wish to include the terms of the consent. For example, is the driver consenting to a single limited query or multiple limited queries? If the driver consents to multiple limited queries, will those queries be conducted over a fixed period of time or for the duration of employment? Is the number of limited queries specific or unlimited? The scope of this consent would be determined by the employer and the employee. The following may be filled in to outline those parameters:

I consent to:

a single limited query during the following time period: _____
 multiple limited queries:
 over the following fixed period of time: _____
OR for the duration of the employment

a specific number of queries: _____
OR an unlimited number of queries

I understand that if the limited query conducted by the District indicates that drug or alcohol violation information about me exists in the Clearinghouse, FMCSA will not disclose that information to the District without first obtaining additional specific consent from me.

I further understand that if I refuse to provide consent for the District to conduct a limited query of the Clearinghouse, the District must prohibit me from performing safety-sensitive functions, including driving a commercial motor vehicle, as required by FMCSA’s drug and alcohol program regulations.

Employee Name

Employee Signature

Date

Adoption date:

Adoption Date:
Classification:
Revised Dates: ;

NYSSBA Sample Policy