

ALCESTER-HUDSON SCHOOL DISTRICT SEXUAL HARRASSMENT POLICY

Status: ADOPTED

Policy ACAA: SEXUAL HARASSMENT

Original Adopted Date: 12/14/2015 Last Reviewed Date: 11/09/2020

SECTION 1- Policy Statement

The Alcester-Hudson School District is committed to a school environment which is free from sexual harassment and conducive to all students' educational opportunities. Sexual harassment can inhibit a student's educational opportunities and an employee's work. Sexual harassment of students attending school in the Alcester-Hudson School District or students from other schools who are at an Alcester-Hudson School District activity, and sexual harassment of school employees, school volunteers, parents, guests, visitors, and vendors of the Alcester-Hudson School District shall also not be tolerated and is strictly prohibited.

All students, school employees, school volunteers, parents, guests, visitors, and vendors shall conduct themselves in a civil and responsible manner and in a manner consistent with school policies. This policy prohibiting sexual harassment shall apply to all students, school employees, school volunteers, parents, guests, visitors, and vendors while on school property or while attending or participating in school activities. For the purposes of this policy, "school activities" include any locations, events, or circumstances over which the District, through its agents, exercises substantial control over both the alleged perpetrator and the context in which the sexual harassment occurs, whether on school-owned property or on non-school property, while in any school-owned or leased vehicle, while at a school bus stop, or when in a private vehicle located on school property during school or during school activities.

The Alcester-Hudson School District shall investigate all reported instances involving sexual harassment. Attempts to resolve the complaint informally or voluntarily should not delay the commencement of the Alcester-Hudson School District's investigation.

In compliance with applicable federal laws and regulations, the Alcester-Hudson School Board has appointed Jason Van Engen as the Alcester-Hudson School District's Title IX Coordinator to coordinate the district's compliance responsibilities under Title IX of the Education Amendments of 1972, as amended. The Title IX Coordinator can be reached at:

Jason Van Engen
PO Box 198
Alcester, SD 57001
Phone#: (605) 934-1890

Unless a different person is designated by the Superintendent to conduct the investigation, the school administrator of the school attendance center where the sexual harassment is alleged to have occurred is responsible for investigating the alleged sexual harassment. Allegations of sexual harassment may also be reported by the administration to other authorities, including but not limited to law enforcement.

The Alcester-Hudson School District will maintain confidentiality to the maximum extent possible under the circumstances. However, a person reporting sexual harassing conduct must understand that should the administrator who is investigating the report determine there is reasonable cause to suspect that sexual harassment did occur which could result in administrative discipline or a referral to the Alcester-Hudson School Board, the person alleged to have sexually harassed another person may have the right to know the identity of the person(s) making the report in order that he/she may have an opportunity to defend himself/herself.

Retaliation Prohibited

The Alcester-Hudson School District strictly prohibits retaliation against any person because he or she has made a report, testified, assisted, or participated in the investigation of a report of alleged sexual harassment. Retaliation includes, but is not limited to, any form of verbal or physical reprisal or adverse pressure. The person(s) alleged to have sexually harassed another person shall not directly or indirectly (such as through a third person) harass, pressure, or retaliate against any other person because of the complaint being reported. A violation of this provision may lead to separate disciplinary action based on retaliation. Any person who believes he or she is being subjected to retaliation because of his or her involvement with a sexual harassment report should immediately contact a school administrator.

Students who violate this policy shall be subject to appropriate disciplinary action, up to and including expulsion. Employees who violate this policy shall be subject to appropriate disciplinary action, up to and including termination of employment. School volunteers, parents, guests, visitors, and vendors who violate this policy may be prohibited from being on school property,

Complaints against school employees 011 grounds other than Sexual Harassment and complaints related to bullying are addressed through other school district policies and not through this policy.

SECTION 2 - Sexual Harassment Defined

"Sexual Harassment" includes conduct based on sex that falls within one or more of the following categories:

1. **Quid Pro Quo.** Quid Pro Quo Sexual Harassment occurs when a District employee or volunteer conditions educational benefits on participation in unwelcome sexual conduct.
2. **Hostile Environment.** A Hostile Environment involves unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education programs or activities.
3. **Sexual Assault.** Sexual Assault includes: (a) any sexual act directed against another person, forcibly and/or against that person's will; (b) any sexual act directed against another person where the person is incapable of giving consent; (c) incest; or (d) statutory rape.
4. **Dating Violence.** Violence committed by a person who is or has been in a social or romantic relationship with the victim. The existence of such a relationship is determined based on (a) the length of the relationship; (b) the type of relationship; and (c) the frequency of interaction between the people involved in the relationship.
5. **Domestic Violence.** Domestic Violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of South Dakota; or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of South Dakota.
6. **Stalking.** Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

Not all harassment falls within the definition of Sexual Harassment. Other laws, regulations and policies also prohibit inappropriate conduct and provide a means for addressing inappropriate conduct should it occur.

SECTION 3 - Sexual Harassment Reporting Procedure and Terminology

Any individual who is aware of conduct meeting the definition of Sexual Harassment occurring on school property or during school activities should immediately report it to a teacher, guidance counselor, or school administrator. The report may be made verbally or in writing. A report may be made anonymously, although disciplinary action may not be based solely on an anonymous report. A person making this communication to these school employees for purposes of this policy is a "Reporter." A person alleged to be a recipient of the sexually harassing activity is a "Complainant." A person alleged to be a perpetrator of sexual harassment is a "Respondent."

Required Reporting

All District employees, other than school counselors with regard to information covered by state law privilege, **must** report any information giving rise to a reasonable suspicion of Sexual Harassment in the District's education programs or activities to the Title IX Coordinator. This includes information obtained by District employees by their own observations, from third parties, or social media. Conversations between a person and a school counselor in the course of the counselor's duties are confidential and will not be reported to the Title IX Coordinator without the individual's consent. However, counselors and psychologists will report suspected child abuse or neglect in accordance with the mandatory reporting requirements set forth in SDCL Chap. 26-8A.

No Bias or Conflict of Interest

All persons involved in handling and investigating Title IX reports must be impartial and not have an actual or perceived conflict of interest or bias against the Complainant or Respondent involved in a Formal Complaint or against Complainants and Respondents generally. Should a report involve allegations against the Title IX Coordinator, the report should be forwarded instead to the Superintendent, who will appoint a qualified substitute to serve in place of the Title IX Coordinator for resolution of the complaint process. If the Investigator finds in the course of the investigation that the facts of the case give rise to an

appearance of a conflict on the part of a District employee involved in resolution of a Title IX complaint, the Investigator will report the conflict to the Superintendent (or, in the case of a conflict involving the Superintendent, to the School Board), who will appoint a qualified substitute to serve in place of the conflicted person for purposes of resolution of the process.

Title IX Coordinator's Initial Response and Supportive Measures

Upon receiving a report of alleged Sexual Harassment, the Title IX Coordinator will contact the Complainant (or the Complainant's parent or guardian, depending upon the age of the Complainant) to discuss Supportive Measures, explain the Formal Complaint process, and provide a copy of this policy.

Supportive Measures are interim steps designed to restore or preserve access to the district's education programs and activities in a manner that does not cause an unreasonable burden to any party. Supportive Measures may include counseling, course modifications, schedule changes, increased monitoring, or supervision among others. Supportive Measures shall be non-disciplinary, non-punitive, personalized, and narrowly tailored. Supportive Measures will be kept confidential to the extent that maintaining confidentiality does not impact the district's ability to provide them. No fee will be charged for providing Supportive Measures. Upon notification of a potential incident of Sexual Harassment, the Title IX Coordinator will implement appropriate Supportive Measures or accommodations that are reasonably available to protect the safety and well-being of the Complainant, the Respondent, and others.

The Title IX Coordinator will document any Supportive Measures offered and the Complainant's response. Neither the Complainant nor the Respondent is not required to accept Supportive Measures.

Threats of Physical Health or Safety

Upon learning of conduct that may constitute Sexual Harassment, the Title IX Coordinator may ask the Superintendent to conduct an individualized safety and risk analysis to determine if a Respondent is an immediate threat to the physical health or safety of any person. If the Superintendent determines that a student Respondent is an immediate threat to the physical health or safety of any person, the district may temporarily remove a student Respondent from the District's education programs or activities. Any removal must be in compliance with other federal laws and any IEP or 504 plan and cannot be for disciplinary purposes. The district will provide notice to the student Respondent and offer alternative educational programs to the student Respondent until a final determination is made under this policy. The student Respondent may challenge the decision immediately upon removal pursuant to SDCL 13-32-4.2.

In appropriate situations, the Superintendent may place an employee Respondent on non-disciplinary administrative leave pending resolution of a claim under this policy.

Presumption Respondents Not Responsible/Preponderance of Evidence Standard

Respondents are presumed to be innocent of Sexual Harassment until a final determination is made via the Formal Complaint process. No Respondent will be subject to disciplinary measures unless found to have committed Sexual Harassment by a preponderance of the evidence at the conclusion of the Formal Complaint process. "Preponderance of the evidence" means a determination by the decisionmaker that the proposition or allegation in question is more likely true than not.

Informal Resolution

Except in the case of a report or reports alleging Sexual Harassment of a student by an employee, the Title IX Coordinator may offer the Complaint and Respondent the option of participating in a voluntary informal resolution process, such as mediation, prior to any final determination. Additionally, either party may request informal resolution by submitting a written request to the Title IX Coordinator. The Title IX Coordinator will notify the other party of the request. If the other party denies the request or either party withdraws from the informal resolution process, the Title IX Coordinator will notify the parties that the informal resolution process is terminated and resume the Formal Complaint process.

Prior to facilitating the informal resolution process, the Title IX Coordinator will provide all parties written notice disclosing the allegations, the requirements of the informal resolution process, right to withdraw and resume formal grievance process, and any consequences resulting from participating in the informal resolution process. The Title IX Coordinator will also obtain the parties' voluntary, written consent to the informal resolution process.

Filing a Formal Complaint

An individual participating or attempting to participate in the educational program or activity of the district who is alleged to be the recipient of sexually harassing conduct (the "Complainant"), either by the Complainant's own report or that of another Reporter, may file a Formal Complaint with the Title IX Coordinator requesting the District investigate the conduct alleged. The Complainant will be asked to either submit physically or electronically signed written complaint or sign a completed Sexual Harassment Report Form,

Exhibit ACAA-E(l), verifying the accuracy of its content. The written complaint or Sexual Harassment Report Form should include the following:

- the date the written complaint was filed, or the Sexual Harassment Report Form was completed,
- the school employee receiving the complaint (if applicable),
- the name of the Complainant or Complainants,
- the address/phone# of the Complainant or Complainants,
- the specific conduct or nature of the sexual harassment complaint including the person(s) alleged to have sexually harassed the complaining party or another person, the date(s) and location where the conduct occurred, witnesses, etc.,
- the date the school employee completed the form (if applicable),
- the date and signature of the person making the Formal Complaint.

If the signed written complaint was given to a teacher or guidance counselor or other employee, the employee shall forward the complaint or Sexual Harassment Report Form to the Title IX Coordinator.

In the absence of a signed Formal Complaint by a Complainant, the Title IX Coordinator may complete and execute a Formal Complaint if the Title IX Coordinator determines that no Informal Resolution is possible and that the circumstances and available reports give rise to a reasonable and articulable suspicion of Sexual Harassment. In that event, the Title IX Coordinator will sign a written complaint to initiate the process but does not thereby become a Complainant. The Complainant need not participate in the process initiated by the Title IX Coordinator but retain all rights of a Complainant.

Dismissal of Complaint or Allegation

The Title IX Coordinator may dismiss a Formal Complaint under the following circumstances:

- **Mandatory Dismissal.** The Title IX Coordinator must dismiss a Formal Complaint when the allegation does not meet the definition of Sexual Harassment under this policy; the action did not occur in the United States; or the activity did not occur in the District's education program or activity.
- **Discretionary Dismissal.** The Title IX Coordinator may dismiss a Formal Complaint if: (1) the Complainant notifies the Title IX Coordinator in writing of their desire to withdraw the Complaint; (2) the Respondent is no longer enrolled or employed at the Alcester-Hudson School District; (3) circumstances prevent the District from gathering sufficient evidence to reach a determination on an allegation or complaint; or (4) the Complainant is no longer a student or otherwise involved with the Alcester-Hudson School District.

Within 10 days of the dismissal, a Complainant may appeal the dismissal in writing to the Superintendent but only on the grounds of: (1) procedural irregularities that affected the outcome; (2) new evidence that was not reasonably available when the determination regarding dismissal was made and this evidence could affect the outcome; or (3) the Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome. The Superintendent will make a determination on the appeal within 10 days of receiving it.

SECTION 4- Procedure for Addressing Sexual Harassment Complaints STEP

1: Investigation and Determination

Should there be a report which alleges an Alcester-Hudson School District student, employee, school volunteer, parent, guest, visitor, or vendor has been subjected to Sexual Harassment, an investigation into the alleged Sexual Harassment will be initiated.

A. Notice of Allegations

Upon receipt of a Formal Complaint and in the absence of grounds for dismissal, the Title IX Coordinator will provide written notice to the Complainant and the Respondent of the allegations and provide them with sufficient time to respond before an assigned investigator conducts any interviews. A copy of this policy will be included with the notice. The notice will include:

- The allegations of Sexual Harassment in sufficient detail as known at that time including the parties, the alleged

- conduct, and date(s) and location(s) of the alleged incident;
- A statement that Respondent is presumed innocent and that a determination regarding responsibility will not be made until the end of the Formal Complaint process;
- A statement that each party may choose an Advisor who may be, but is not required to be, an attorney;
- A statement that each party has a right to inspect and review evidence;
- A statement that allegations need to be proved by a Preponderance of the Evidence;
- Notification of the Alcester-Hudson District's Formal Complaint resolution process; and
- Reference to all provisions of the District's code of conduct that prohibit knowingly making false statements or submitting false information.

B. Timeframe for Formal Complaint Process

The Formal Complaint process begins with filing or signing the Formal Complaint and ends with a determination of responsibility. The Title IX Coordinator will coordinate the process and establish timelines as needed which will apply • equally to the Complainant and Respondent. The Title IX Coordinator may adjust the timelines as necessary for good cause. If the parties elect to pursue informal resolution (discussed below), the timelines will be suspended during that process. If the Title IX Coordinator grants an extension of time for one party, the same extension will be granted to the other party. The Title IX Coordinator shall provide a written explanation to the parties of the good cause basis for any delay or extension. Reasons for extending time frames include but are not limited to: Absence of a party, Advisor, or witness; school holidays or break; concurrent law enforcement investigation or activity; or accommodating students with disabilities.

Meetings will be scheduled at times that are convenient for both parties to the extent possible.

C. Investigation of Formal Complaint

The Title IX Coordinator will appoint an Investigator (who may or may not be the Title IX Coordinator) to investigate the allegations in the Formal Complaint. Generally, the investigation shall be conducted in 30 calendar days or less. The burden of proof and gathering evidence sufficient to make a determination regarding responsibility rests with the District and not the parties. All allegations in the Formal Complaint will be investigated.

Gathering Evidence. The Investigator will meet with both the Complainant and Respondent separately to conduct initial interviews, gather information, and collect evidence. The parties may also submit evidence, testimony, witnesses, and other information to the Investigator. The Investigator shall establish deadlines for the submission of these materials that apply equally to both Complainant and Respondent. Any party who is invited or expected to participate in a meeting or interview will be provided written notice by the Investigator of the date, time, location, participants, and purpose of the investigative interview or meetings to provide the party with time to prepare. If a party wishes to use or does use information protected under a legally recognized privilege, the party must provide written proof showing that the person holding the privilege consents to use of the information for purposes of the Formal Complaint process.

Advisors. The Complainant and the Respondent may be accompanied by an Advisor during the initial interview or other meetings during the Formal Complaint process. The District may require a minor student's parents to consent to the release of information related to allegations to the chosen Advisor to preserve confidentiality of student information under the Family Educational Rights and Privacy Act (FERPA). Designated Advisors will be informed that any confidential information received may only be used for purposes of the Title IX complaint process.

Inspection of Evidence. Prior to issuing a report, the Investigator will make any evidence submitted by the parties or obtained through the investigation available to both parties for inspection and review to give them the opportunity to respond meaningfully to it prior to the investigation's conclusion. This includes information the Investigator has chosen not to rely on when reaching a determination regarding responsibility. The Title IX Coordinator will set a deadline for the parties to review the evidence and submit a written response to the Investigator. The Investigator will consider the parties' written responses prior to finalizing the investigation.

Investigation Report. Within 10 days after receiving the final responses from the parties, the Investigator will complete a report and submit it to the Title IX Coordinator. The Title IX Coordinator will provide the report to the Complainant and Respondent at the same time. The report will summarize and analyze the relevant facts and evidence. Other information may be included in the investigation report such as District policies implicated by the facts.

After providing the final investigation report to the Complainant and Respondent, the Title IX Coordinator will provide a copy of the report to the Superintendent who will determine whether the allegations in the Formal Complaint constitute Sexual Harassment by a Preponderance of the Evidence. If the allegations are against the Superintendent or if the Superintendent has a conflict or is otherwise unable to serve as the decision-maker, the Title IX Coordinator will appoint an alternative decision-maker who is properly trained pursuant to the Title IX regulations.

STEP 2: Determination Regarding Responsibility

Upon receipt of the investigation report, the Superintendent (or designated alternative decision-maker) will determine if the Preponderance of the Evidence establishes that the Respondent committed Sexual Harassment. The Superintendent will remain objective in evaluating all evidence and will not make credibility determinations based on a person's status (e.g., Complainant, Respondent, or witness).

A. Interrogatories

The Superintendent will give both Complainant and Respondent at least 10 calendar days after receiving the final investigator's report to submit written questions to be asked of the other party or witnesses identified in the report. Questions must be relevant and respectful. The Superintendent will give each party and any witness an equal opportunity to respond to the questions. The Superintendent may also permit additional, limited follow-up questions. If the Superintendent determines that a question is irrelevant or inappropriate, an explanation will be provided to the party asking the question. The Superintendent may impose reasonable deadlines to ask and respond to questions which will apply equally to both Complainant and Respondent.

Notwithstanding the rights of the parties to ask questions, the Superintendent will not consider questions or evidence about the Complainant's sexual predisposition or prior sexual behavior, unless the question is meant to prove someone other than Respondent committed the alleged conduct, or if the questions or evidence concern specific incidents in the Complainant's prior sexual behavior with respect to Respondent and are offered to prove consent to sexual contact.

B. Decisionmaker Determination

Within 20 calendar days after the deadline for both the Complainant and Respondent to ask and answer questions and submit any documentation, the Superintendent will determine whether the conduct alleged constitutes Sexual Harassment by a Preponderance of the Evidence. The written determination of responsibility will:

- Identify the allegations potentially constituting Sexual Harassment;
- Describe the procedural steps taken during the Final Complaint process, including notifications to parties, interviews with parties and witnesses, site visits, and methods used to gather evidence;
- Provide findings of fact supporting the determination;
- Identify if the District's code of conduct or other policies apply;
- State the rationale for the determination relative to each allegation.
- If Respondent is found to have committed Sexual Harassment, determine the appropriate remedy(ies). The remedies will be designed to restore or preserve the Complainant's equal access to the District's education program and activities and will be implemented by the Title IX Coordinator. Remedies may include suspension, expulsion, or ineligibility to play sports or serve in student government among others. Remedies do not need to be non-disciplinary, non-punitive, or avoid burdening the Respondent if the Respondent is found to have violated this policy. If the remedy includes long-term suspension of a Student Respondent, the Student Respondent will be advised of the right to appeal the suspension pursuant to SDCL 13-32-4.2 at the conclusion of the Title IX process (i.e., after any appeal is resolved or the deadline for appeal has passed).
- Provide notice of the procedures and permissible bases to appeal the determination.

The written determination will be provided to the Complainant and Respondent simultaneously.

STEP 3: Appeal

Either party may appeal the Superintendent's determination to the Alcester-Hudson School Board, but only on the grounds of: (1) procedural irregularities which impacted the decision; (2) the discovery of new evidence that was not reasonably available when the determination was made and could affect the outcome; or (3) the Title IX Coordinator, Investigator, or decisionmaker had a conflict of interest or bias that affected the outcome.

If the party wishes to appeal, the party must file a written request for appeal setting forth all grounds to support the appeal with the Title IX Coordinator within 10 calendar days of the final determination. The Title IX Coordinator will submit the appeal, the Investigator's report, and the Superintendent's written determination to the School Board who will review the appeal. The Title IX Coordinator will notify the non-appealing party of the appeal and the appeal process. The non-appealing party will be provided 10 calendar days from notification to respond to the appeal.

No action on the sanctions or remedies issued by the Superintendent will be taken until the appeal process has concluded. Supportive Measures will be maintained until a final determination of the appeal.

The School Board will review the appeal record in executive session, including the investigator's report, the written determination

by the Superintendent, and the written arguments of the Complainant and Respondent. No hearing will be conducted. The School Board's decision will be made by majority vote. The School Board may affirm the decision, reverse the decision, or remand the decision for further proceedings. The School Board will issue its written decision within 45 days of receipt of all relevant appeal documents (e.g., investigator's report, Superintendent's determination, and appeal and reply). The School Board's decision is final.

SECTION FIVE-Additional Information

1. Training

All District employees will receive regular training relative to mandatory reporting obligations, and any other responsibilities they may have relative to this policy. The training will inform school counselors of the extent to which they may keep information confidential.

Title IX Coordinators, investigators, decisionmakers, and any person who facilitates an informal resolution process will receive training on the definition of Sexual Harassment, this policy, the scope of the District's education programs and activities, and how to conduct an investigation. The training will also include avoiding prejudgment of the facts, conflicts of interest, and bias. Decisionmakers will also receive training on issues of relevance of questions and evidence, including when questions about the Complainant's sexual predisposition or prior sexual behavior are allowed. Investigators will receive training on issues of relevance to create an investigation report that fairly summarizes relevant evidence.

2. Other Reporting Options

The Alcester-Hudson School District encourages people who believe they have been subject to or witnessed Sexual Harassment to use this policy. Individuals also have the right to file a complaint with outside enforcement agencies, such as the United States Department of Education Office of Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), the South Dakota Department of Labor, and state or local law enforcement authorities. The District reserves the right to conduct its investigation and take appropriate actions independently of any ongoing legal proceedings and regardless of the outcome or disposition of any legal proceeding.

3. Required Reporting

If at any point during the District's investigation evidence is uncovered that requires reporting to law enforcement, Child Protective Services, or other entity, District employees must take the necessary actions to do so in accordance with the law.

4. Misuse of Policy

A person who brings a reasonable charge of Sexual Harassment in good faith, even if it may be erroneous, will not be subject to discipline. However, the use of this policy for false, malicious, or frivolous purposes is strictly prohibited. Any student, faculty, or staff member who brings a false, malicious, or frivolous charge of Sexual Harassment may be subject to disciplinary action.

5. Record Retention

The Title IX Coordinator will maintain records related to the District's process and response related to allegations of Sexual Harassment for seven years. This includes records of any actions taken in response to allegations of Sexual Harassment, including Supportive Measures, that do not result in a Formal Complaint.