



## Regulation of the Chancellor

Number: **A-831**

Subject: **STUDENT-TO-STUDENT SEXUAL HARASSMENT**

Category: **STUDENTS**

Issued: **October 7, 2021**

### SUMMARY OF CHANGES

This regulation supersedes and replaces Chancellor's Regulation A-831 dated October 23, 2019.

This regulation establishes a procedure for the filing, investigation, and resolution of complaints of student-to-student sexual harassment.

#### Changes:

- Clarifies that the Sexual Harassment Prevention (SHP) liaison serves as a resource on the topics covered in this regulation. (Abstract)
- Adds that student-to-student sexual harassment is prohibited during online learning. (Abstract, Section I.B)
- Revises the definition of student-to-student sexual harassment. (Section I.A)
- Adds texting, apps, chat rooms, and gaming systems to the list of examples of modes of communicating harassment electronically. (Section I.E)
- Adds a provision regarding employees who fail to make a report as set forth under Section II.C. (Section II.D)
- Adds that the Title IX Coordinator may receive reports of alleged student-to-student sexual harassment. (Section II.E)
- Removes "in the investigative file." (Section II.J)
- Adds information to Section II.L about the principal/designee advising the parent(s) of the parties of the allegations whenever a report is received. (Section II.L)
- Adds a reference to Chancellor's Regulation A-412, and replaces "Borough/Citywide Office Director of Student Services" with "Borough Safety Director." (Section II.M)
- Changes "obtain" to "ask them to prepare" witness statements. (Section III.A.5)
- Clarifies that referrals to the school social worker, guidance counselor, psychologist, or other appropriate school staff are examples of "guidance interventions." (Section IV.B)
- Adds information on situations where the school staff believe that follow-up action to an incident warrants revision of the student's Individualized Education Program (IEP) or Section 504 Plan. (Section IV.D)
- Clarifies that "conspicuously posting" the Sexual Harassment poster prepared by the Office of Safety and Youth Development (OSYD) means "in locations deemed highly visible to

students, parents, and staff,” and adds that schools should make every effort to post this information as early as possible in the school year. (Section V.A)

- Adds that each school must annually distribute the written materials prepared by OSYD, and that these materials include information on whom parents may contact outside the school for additional support. (Section V.B)
- Adds that each principal/designee should make every effort to provide student and parents the name and contact information of the SHP liaison as early as possible in the school year. (Section V.C)
- Clarifies that at least one (1) SHP liaison completes the SHP mandated training developed by OSYD. (Section V.F)
- Reorders and updates the information each principal must submit in its annual Consolidated School and Youth Development Plan. (Section VI)
- Adds “including providing supports and interventions” to Section VII on confidentiality.
- Throughout, adds hyperlinks to referenced Chancellor’s Regulations.



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### ABSTRACT

It is the policy of the New York City Department of Education (DOE) to maintain a safe and supportive learning and educational environment that is free from sexual harassment committed by students against other students. Such harassment is prohibited in school, during school hours, during online learning, before or after school, while on school property, at school-sponsored events, or while traveling on vehicles funded by the DOE or off school property when such behavior disrupts or would foreseeably disrupt the educational process or endangers or would foreseeably endanger the health, safety, morals, or welfare of the school community. This regulation requires the designation of a Sexual Harassment Prevention liaison, as defined below, trained on this regulation and who may receive reports of student-to-student sexual harassment, and who serves as a resource on the topics covered in this regulation. This regulation sets forth reporting, investigative, notification, and follow-up procedures for student-to-student sexual harassment. Students who have engaged in behavior which violates this regulation will receive interventions, supports, and disciplinary responses, as appropriate consistent with the Citywide Behavioral Expectations to Support Student Learning (Discipline Code) and Chancellor's Regulation A-443. Victims and witnesses will receive interventions and supports as appropriate. For complaints of student-to-student discrimination (including discrimination based on gender, gender identity, gender expression, and sexual orientation), harassment, intimidation and/or bullying, please refer to Chancellor's Regulation A-832.

### I. POLICY

- A. It is the policy of the DOE to maintain a safe and supportive learning and educational environment that is free from sexual harassment committed by students against other

students. It is a violation of this regulation for a student to harass another student through unwelcome conduct or communication of a sexual nature which is sufficiently severe, pervasive, or persistent as to either:

- (1) create a hostile, offensive, or intimidating school environment for another student by conduct that:
  - a. has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities, or ability to participate in or benefit from an educational program (e.g., the student is not regularly attending classes; the student's academic performance or performance in class has changed), school-sponsored activity or any other aspect of a student's education (e.g., the student is no longer regularly attending extracurricular activities or level of participation is changed); or
  - b. has or would have the effect of unreasonably and substantially interfering with a student's mental, emotional, or physical well-being (e.g., the student's behavior in school is impacted; the student is withdrawn or isolating themselves; the student appears to be anxious, depressed, or distracted); or
  - c. reasonably causes or would reasonably be expected to cause a student to fear for their physical safety (e.g., the student and/or other students or staff have expressed concerns about the student's safety); or
  - d. reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student.

**OR**

- (2) otherwise adversely affects a student's educational opportunities.
- B. Student-to-student sexual harassment is prohibited in school, during school hours, during online learning, before or after school, while on school property, at school-sponsored events, or while traveling on vehicles funded by the DOE or off school property when it disrupts or would foreseeably disrupt the educational process or endangers or would foreseeably endanger the health, safety, morals, or welfare of the school community.
  - C. It is the policy of the DOE to prohibit retaliation against any student, parent, or DOE employee who in good faith reports or participates in an investigation of allegations of student-to-student sexual harassment. Any adverse act against individuals due to their participation in such protected activity is considered retaliatory. Allegations of retaliation will be investigated and subject to appropriate disciplinary action if substantiated. The term "parent" whenever used in this regulation, means the student's parent(s) or guardian(s), or any person(s) in a parental or custodial

- relationship to the student, or the student, if the student is an emancipated minor or has reached 18 years of age.
- D. Student-to-student sexual harassment is unwelcome conduct and/or communication of a sexual nature by a student directed against another student. Such behavior can constitute sexual harassment regardless of the gender, sexual orientation, gender identity, or gender expression of any of the students involved. Sexual harassment may be a single incident or a series of related incidents.
- E. Student-to-student sexual harassment may take many forms. It may be verbal, nonverbal, physical, written, or electronically communicated. Electronically communicated harassment includes communications via technology including, but not limited to: internet; cell phone; email; personal digital assistant; texting; apps; wireless handheld device; social media; chat rooms; gaming systems; and blogs.
- F. Examples of student-to-student sexual harassment include but are not limited to:
- pressure or requests for sexual activity or favors;
  - engaging in sexually violent or coercive behavior (e.g., assault, rape) or forcing a person to perform a sexual act;
  - engaging in physical conduct of a sexual nature such as touching an individual's body or clothes, patting, kissing, pinching, grabbing, or brushing up against another person;
  - making sexual comments, innuendoes, remarks, insults, threats, teasing and/or jokes or asking unwelcome questions of a sexual nature;
  - making graphic, verbal, or written comments about an individual's body;
  - making obscene gestures;
  - stalking another person, including through the use of technology;
  - leering, sexual flirtations, or propositions;
  - spreading lies or rumors of a sexual nature;
  - recording, posting, displaying, and/or distributing, without permission, sexually oriented or suggestive images, videos, audio recordings, pictures, or drawings; and
  - threatening or engaging in physical, sexual, verbal and/or emotional abuse to harm, intimidate or control a current or former or potential dating partner (dating abuse).

## II. REPORTING PROCEDURES

- A. "Report" as used in this regulation means a report of alleged student-to-student sexual harassment reported by the alleged victim or others (e.g., staff, parents, other students).

- B. Each principal must designate at least one (1) staff member to serve as a Sexual Harassment Prevention (SHP) liaison to whom reports of student-to-student sexual harassment can be made and who serves as a resource for students and staff. The SHP liaison must be a licensed administrator, supervisor, teacher, guidance counselor, school psychologist, or social worker who works at the school full-time.
1. At all times, there must be an SHP liaison in the school who has received the training set forth in Section V.D. In the event an SHP liaison vacates their appointment, the principal must ensure that an SHP liaison has been appointed and received such training within 30 days. In the interim, the principal must immediately designate an interim SHP liaison.
  2. In the event an SHP liaison is temporarily unable to perform their duties in the school for an extended period of time, the principal must designate another person to serve on an interim basis until the SHP liaison returns.
- C. Any staff member who witnesses student-to-student sexual harassment or who has knowledge or information or receives notice that a student may have been the victim of sexual harassment by another student is required to promptly verbally report the alleged act to the SHP liaison or to the principal/designee within one (1) school day and submit the [Complaint/Reporting form](https://cdn-blob-prd.azureedge.net/prd-pws/docs/default-source/default-document-library/a-831-reporting-form.pdf?sfvrsn=43ca449) (available at <https://cdn-blob-prd.azureedge.net/prd-pws/docs/default-source/default-document-library/a-831-reporting-form.pdf?sfvrsn=43ca449>) describing the incident to the SHP liaison or to the principal/designee no later than two (2) school days after making the verbal report. The principal/designee must ensure that hard copies of the reporting forms are readily available.
- D. An employee who fails to make a report as set forth above in Section II.C may be subject to discipline, which may include termination, mandatory training, and/or other appropriate follow up action.
- E. Students, parents, and individuals other than staff may report allegations of student to-student sexual harassment verbally or in writing, including by submitting the [Complaint/Reporting Form](https://www.schools.nyc.gov/docs/default-source/default-document-library/student-complaint-reporting-form) (available at <https://www.schools.nyc.gov/docs/default-source/default-document-library/student-complaint-reporting-form>), to the principal/designee, SHP liaison, or any other school staff member, notifying the Title IX Coordinator (by phone, email, or in person via the information listed in Section IX below), or via the [online portal](https://www.nycenet.edu/bullyingreporting) (available at <https://www.nycenet.edu/bullyingreporting>).
- F. Students who believe they have been the victim of sexual harassment by another student or who witness or have information of such incidents should immediately report the incident.
- G. If a student or parent has concerns about making a report to the school, the student/parent may contact the Office of Safety and Youth Development (OSYD) by e-mailing the report to [RespectForAll@schools.nyc.gov](mailto:RespectForAll@schools.nyc.gov). Examples of circumstances

where this might be appropriate include: if the student/parent is not sure the behavior is covered by the regulation; if the student/parent previously made a report and the behavior has continued; or if the student/parent is concerned about coming forward. In such circumstances, OSYD will determine the appropriate follow-up action consistent with this regulation.

- H. Students, parents, and individuals other than staff may make an anonymous report, and such reports will be investigated and addressed pursuant to the procedures set forth in this regulation to the extent possible in light of the information provided by the anonymous reporter.
- I. The SHP liaison must immediately notify the principal/designee of any report received.
- J. The principal/designee must ensure that all written reports (e.g., emails, reports made using the Complaint/Reporting Forms) are maintained at the school.
- K. The principal/designee must enter all reports into the Online Occurrence Reporting System (OORS) within one (1) school day of receipt of the report and promptly investigate as set forth in Section III.
- L. The principal/designee must advise the parent(s) of the alleged victim and the accused student of the allegations whenever a report is received, and should advise them that the incident will be investigated and of the availability of appropriate supports and interventions. Upon request, copies of this regulation and related resources (available at <https://www.schools.nyc.gov/school-life/policies-for-all/respect-for-all/respect-for-all-handouts>) should be made available to parents electronically or in hard copy if parents do not have access to the electronic version. Such notifications must be made immediately but no later than two (2) school days following receipt of the report by the principal/designee. If the alleged victim informs the principal/designee of safety concerns in regard to such notification, the principal/designee shall decide whether to inform the alleged victim's parent(s) following consideration of privacy and safety concerns. The principal/designee may consult with their Senior Field Counsel, and with the Title IX Coordinator or Title IX Liaison, in making this decision.
- M. Where the principal/designee believes that the alleged conduct constitutes criminal activity, they must contact the police (see Chancellor's Regulation A-412, <https://www.schools.nyc.gov/docs/default-source/default-document-library/a-412-security-in-the-schools-english>). The principal/designee may consult with the Senior Field Counsel and/or the Borough Safety Director.
- N. If the report cannot be investigated at the school level due to the nature and seriousness of the allegation(s), the principal/designee must consult with the DOE's Title IX Coordinator.

### III. INVESTIGATION

- A. All reports must be investigated. All parties and all witnesses must be interviewed separately, any investigative notes must be maintained, and the date of each interview must be documented. The principal/designee must take the specific investigative steps set forth below as soon as practicable, but no later than five (5) school days after receipt of the report:
1. interview the alleged victim;
  2. ask the alleged victim to prepare a written statement which includes as much detail as possible, including a description of the behavior, when and where it took place and who may have witnessed it;
  3. interview the accused student, and advise them that if the conduct has occurred, it must cease immediately;
  4. ask the accused student to prepare a written statement;
  5. interview any witnesses and ask them to prepare their written statements; and
  6. obtain any relevant evidence (e.g., image(s) or video surveillance or audio recordings, where applicable). The principal/designee should refer to the DOE guidance on how to deal with inappropriate cyber-content, and should consult with the Borough Safety Director and Senior Field Counsel, if necessary.
- B. At the conclusion of the investigation, the principal/designee must review all the evidence and determine whether the allegations are substantiated by a preponderance of the evidence (i.e., whether based upon a review of all of the evidence, including the quality of the evidence and the credibility of the parties and witnesses, it is more likely than not that the alleged conduct occurred).
- C. If the allegations are substantiated, the principal/designee must also determine whether the conduct violates this regulation. In making this determination, the principal/designee must evaluate the totality of the circumstances surrounding the conduct. The principal/designee should consider a number of factors, which may include but are not limited to:
- the ages of the parties involved;
  - the nature, severity and scope of the behavior;
  - whether the conduct is sexual in nature;
  - whether the conduct is offensive;
  - whether the conduct is unwelcome;
  - the frequency and duration of the behavior;
  - the number of persons involved in the behavior;
  - the context in which the conduct occurred;
  - where the conduct occurred;

- whether there have been other incidents in the school involving the same students;
  - whether the conduct adversely affected the victim's education, including attendance, academic performance, or participation in extracurricular activities;
  - whether the conduct has affected the victim's behavior or social interactions in school;
  - whether concerns have been expressed about the victim's safety; and
  - whether the victim's mental, emotional, or physical well-being have been impacted.
- D. At the conclusion of the investigation, the principal/designee must enter the following information into OORS: the investigative findings; a determination of whether the allegations have been substantiated; and a determination of whether the conduct constitutes a violation of this regulation. This information must be entered into OORS within ten (10) school days of receipt of the report of alleged student-to-student sexual harassment, absent extenuating circumstances. A copy of the OORS report must be made available to the Title IX Coordinator and the Borough/Citywide Office, Director of Student Services.
- E. The principal/designee must advise the parent(s) of the alleged victim and the parent(s) of the accused student in writing whether any allegations are substantiated and whether the conduct constitutes a violation of this regulation. If any of the allegations are substantiated, this notice must also advise the parents to contact the school to discuss the incident and any follow-up action and the availability of interventions and supports for their child, where applicable. Parents must be advised within ten (10) school days of receipt of the report, absent extenuating circumstances. If a decision was made not to notify the parents of the alleged victim as set forth in Section II.K, such parents shall also not be advised of the information set forth in this paragraph.
- F. The information set forth in Section III.E shall be provided in accordance with state and federal laws protecting the confidentiality of student record information. Therefore, the parents of the alleged victim may only be notified of any follow-up action, interventions or supports that pertain to the alleged victim and the parents of the accused student may only be notified of any follow-up action, interventions or supports that pertain to the accused student.
- G. If at any time before or during the course of the investigation, the principal/designee determines that interventions and supports are appropriate before the final outcome of an investigation to ensure the safety or the well-being of a student (including the victim, the accused student and any witnesses), the student's parent must be notified, and appropriate interventions and supports should be documented, implemented, and monitored, and modified where appropriate, as set forth in Section IV.B.

#### IV. FOLLOW-UP ACTION

- A. The principal/designee must take immediate steps and appropriate follow-up action to ensure that the conduct has stopped.
- B. Once the investigation is completed and a determination is made, as set forth in Section III, interventions and supports must be provided to the victim and the accused student, and witnesses, where appropriate. Such interventions and supports must be assessed on a case-by-case basis and must be monitored and modified, as appropriate. Interventions and supports include but are not limited to the following:
- Referral to in-school or out-of-school medical services;
  - Guidance interventions (e.g., referral to the school social worker, guidance counselor, psychologist, or other appropriate school staff), or referral to community-based agencies for counseling, support, and/or education or mental health services;
  - Academic supports and adjustments (e.g., change in classes, lunch/recess, or after-school program schedules); and
  - Development of an individual support plan (an individual support plan must be developed and implemented for a student who has been the victim of two or more substantiated violations of this regulation in the same school year and/or for a student who has been found to have violated this regulation two or more times in the same school year).

Additional information about supports and interventions can be found in the Discipline Code. Neither mediation nor conflict resolution is under any circumstances an appropriate intervention for any conduct that violates this regulation. (Also see Chancellor's Regulations A-101 (<https://www.schools.nyc.gov/docs/default-source/default-document-library/a101-admissions-readmissions-transfers-english>) and A-449 (<https://www.schools.nyc.gov/docs/default-source/default-document-library/a-449-safety-transfers>) which set forth the policies and procedures for obtaining a transfer if a transfer may be appropriate).

- C. When one student uses a pattern of threatened or actual physical, sexual, and/or emotional abuse to control a dating partner or in cases of sexual violence, the school should refer the victim and the accused student to separate appropriate school or community-based agencies for counseling, support, and education.
- D. If school staff believe that follow-up action to an incident warrants revision of the student's Individualized Education Program (IEP) or Section 504 Plan, they should follow the appropriate procedures as outlined in Chancellor's Regulation A-710 (<https://www.schools.nyc.gov/docs/default-source/default-document-library/a-710>) and the Special Education Standard Operating Procedures Manual (SOPM,

[https://infohub.nyced.org/docs/default-source/default-document-library/specialeducationstandardoperatingproceduresmanualmarch.pdf?sfvrsn=4cdb05a0\\_2](https://infohub.nyced.org/docs/default-source/default-document-library/specialeducationstandardoperatingproceduresmanualmarch.pdf?sfvrsn=4cdb05a0_2)).

- E. Students who have been found to have violated this regulation will be subject to appropriate disciplinary responses in accordance with the Discipline Code and the procedures and requirements set forth in Chancellor's Regulation A-443 (<https://www.schools.nyc.gov/docs/default-source/default-document-library/a-443-3-5-04-english>).
- F. The principal/designee must enter all interventions and supports offered to the parties and witnesses and all disciplinary responses taken with respect to the student(s) found to have engaged in the prohibited conduct into the Suspensions and Office of Hearings Online system (SOHO) through OORS.

#### **V. PREVENTION, NOTIFICATION and TRAINING**

- A. Each school must conspicuously post (in locations deemed highly visible to students, parents, and staff) [the Sexual Harassment poster](#) prepared by OSYD (available at <https://www.schools.nyc.gov/school-life/policies-for-all/respect-for-all/respect-for-all-handouts>) explaining the DOE's policy with respect to student-to-student sexual harassment in a place accessible to students, parents, and staff. This notice must contain the name of the SHP liaison designated to receive reports of sexual harassment and must indicate where in the school copies of this regulation may be obtained and how to file a report. Schools should make every effort to post this information as early as possible in the school year.
- B. Each school must annually distribute or make electronically available to all school staff, parents, and students the written materials prepared by OSYD highlighting the procedures and policies set forth in this regulation, including the procedures for how to make a report, and whom parents may contact outside the school for additional support (available at <https://www.schools.nyc.gov/school-life/policies-for-all/respect-for-all/respect-for-all-handouts>). Schools must also make this information available to parents/students enrolling in the school during the school year.
- C. Each principal/designee must ensure that the name and contact information of the SHP liaison are included on the school's website and shared with students and parents at least once per year, including but not limited to through electronic communication or sending such information home with students. Schools should make every effort to provide this information as early as possible in the school year.
- D. Each principal/designee must ensure that students and staff (including non-instructional staff) have been provided with information and training developed by OSYD on the policy and procedures set forth in this regulation by October 31 of each school year.

- E. Each principal must receive training developed by OSYD on identifying and preventing sexual harassment (including sexual violence), anti-discrimination policies and laws, grievance procedures, and resources implementing this regulation available to the parties involved by October 31 of each school year. Each principal must ensure that the individual(s) designated to conduct the investigation described in Section III also receives such training by October 31 of each school year.
- F. Each principal must ensure that, in addition to the school training set forth in Section V.D, at least one (1) SHP liaison completes the SHP mandated training developed by OSYD.
- G. A copy of this regulation must be made available to parents, school staff, and students upon request.

#### **VI. CONSOLIDATED SCHOOL AND YOUTH DEVELOPMENT PLAN**

Each principal must submit the following information, and any additional information as determined by the DOE, in its annual Consolidated School and Youth Development Plan by October 31 of each school year:

- A. The name(s) of the SHP liaison(s). This information must be updated as appropriate;
- B. Certification that at least one (1) SHP liaison has or will receive the training set forth in Section V.F;
- C. Certification that students have been provided with information and training on the policy and procedures in this regulation set forth in Section V.D;
- D. Certification that staff members, including non-instructional staff, have been provided with the information and training set forth in Section V.D;
- E. Confirmation that the agenda, signed attendance rosters and a copy of all training materials to document the annual staff training required by Section V.D are on file at the school;
- F. Certification that the principal and any staff who conducts investigations under this regulation has completed the training set forth in Section V.E; and
- G. A plan for preventing and addressing sexual harassment.

#### **VII. CONFIDENTIALITY**

It is the policy of the DOE to respect the privacy of all parties and witnesses to reports made under this regulation. However, the need for confidentiality must be balanced against the obligation to cooperate with police investigations, to provide due process, and/or to take necessary action to investigate or resolve the report, including providing supports and interventions. Therefore, information regarding the report may be disclosed in appropriate circumstances or as required by law or where necessary to protect a student whose safety or well-being is at risk.

**VIII. ALTERNATE REPORTING PROCEDURE**

These internal procedures do not deny the right of any individual to pursue other avenues of recourse, which may include filing charges with an external agency such as:

*Office for Civil Rights*

New York Office

32 Old Slip, 26<sup>th</sup> Floor

New York, NY 10005-2500

Telephone: (646) 428-3800

Facsimile: (646) 428-3843

[Email: OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)

<http://www.ed.gov/ocr>

**IX. INQUIRIES**

Inquiries pertaining to this regulation should be addressed to:

*Office of School and Youth Development*

NYC Department of Education

52 Chambers Street – Room 218

New York, NY 10007

Telephone: (212) 374-6807

Facsimile: (212) 374-5751

[Email: RespectForAll@schools.nyc.gov](mailto:RespectForAll@schools.nyc.gov)

*Title IX Coordinator*

65 Court Street, Room 200

Brooklyn, NY 11201

[Email: Title IX Inquiries@schools.nyc.gov](mailto:Title_IX_Inquiries@schools.nyc.gov)

Telephone: (718) 935-4987