

Sexual Harassment Investigation Procedures (Title IX) – Regulation

Definitions

1. **Complainant**. A student participating or attempting to participate in the education program or activity of the District who is alleged to be the victim of conduct that could constitute Title IX sexual harassment.
2. **Decision Maker**. An individual who assesses the relevant evidence, including party and witness credibility, and applies the preponderance of the evidence standard to determine whether the Respondent was responsible for the alleged sexual harassment.
3. **Formal Complaint**. A document or electronic submission filed and signed through a physical or digital signature by a Complainant, or a document signed by the Title IX Coordinator alleging Title IX sexual harassment against a Respondent and requesting that the District investigate the allegation of sexual harassment.
4. **Investigator**. An individual trained to objectively evaluate the credibility of parties and witnesses, synthesize all available evidence, including inculpatory and exculpatory evidence.
5. **Parties**. The Complainant(s) and Respondent(s), collectively.
6. **Respondent**. An individual who has been reported to be the perpetrator of conduct that could constitute Title IX sexual harassment.
7. **School District Educational Program or Activity**. Locations, events, or circumstances over which the District exercises substantial control over both the Respondent and the context in which the Title IX sexual harassment occurs.
8. **Supportive Measures**. Non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modification of work or class schedules, mutual restrictions on contact between parties, increased security and monitoring of certain areas of the school, and other similar measures.
9. **Title IX Coordinator**. A District employee who has been designated to coordinate the District's efforts to comply with Title IX responsibilities.
10. **Title IX Sexual Harassment**. Conduct on the basis of sex that satisfies one or more of the following:
 - a. A District employee conditioning the provision of aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct;
 - b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity; or
 - c. "Sexual assault" as defined in 20 U.S.C. § 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. § 12291(1)(1), "domestic violence" as defined in 34 U.S.C. § 12221(a)(8), or "stalking" as defined in 34 U.S.C. § 12291(a)(30).

Reporting

1. Any person may report sexual harassment (whether or not the person reporting is the person alleged to be the victim of the conduct that constitutes sexual harassment).
 - a. Reports may be made in person, by mail, by telephone, or by electronic mail using the information for the District's Title IX Coordinator or other District employee.
 - b. Reports of sexual harassment made to any District employee should be forwarded to the District's Title IX Coordinator.
 - c. If the alleged harasser is the Title IX Coordinator, an alternate administrator will be designated by a District administrator to address the report.

Title IX Coordinator Response

1. Any school district employee that receives a report of Title IX Sexual Harassment must report the allegation to the District's Title IX Coordinator, who upon receiving such a report, shall perform the following:
 - a. Promptly contact the Complainant to discuss the availability of supportive measures;
 - b. Consider the Complainant's wishes with respect to supportive measures;
 - c. Inform the Complainant of the availability of support measures with or without the filing of a formal complaint; and
 - d. Inform the Complainant that any supportive measures will be kept confidential, provided maintaining confidentiality would not impair the ability of the District to provide supportive measures.
 - e. Be responsible for the implementation of any remedies, if applicable.

Filing a Formal Complaint

1. A Complainant, or a parent or guardian with the legal right to act on the Complainant's behalf, may file a complaint. Complaints must be filed in writing and signed by the Complainant. Completed complaints must be filed with the District's Title IX Coordinator. If a written complaint is provided to a District employee other than the Title IX Coordinator, the employee will promptly forward the complaint to the Title IX Coordinator. Complaints must be filed within 180 days of the event giving rise to the complaint or from the date the Complainant could reasonably become aware of such occurrence. The Complainant may receive assistance as needed in filing a complaint. Title IX Coordinators may also initiate a complaint. The District will endeavor to reach a prompt and equitable resolution of all complaints within 60 days of the initial filed complaint.

Grievance Process

1. After a formal complaint is filed and signed by the Complainant, or a formal complaint is signed by the Title IX Coordinator, then the District will initiate the grievance process.
 - a. The Title IX Coordinator or Investigator will provide written notice to the Complainant and Respondent that includes:
 - i. Notice of the District's grievance process including the informal resolution process;
 - ii. Notice of the allegations of Title IX sexual harassment potentially constituting sexual harassment, including:
 - A. Sufficient detail known at the time and with sufficient time to prepare a response before any initial interview:
 - i. The identities of the parties involved in the incident, if known;
 - ii. The conduct allegedly constituting Title IX sexual harassment;
 - iii. Date and location of the alleged incident, if known.
 - iii. Notice that the Respondent maintains a presumption of not responsible for the alleged conduct, and that the determination regarding responsibility is made at the conclusion of the grievance process;
 - iv. Notice that the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard;
 - v. Notice that the Complainant and Respondent may have an advisor of their choice, who may be, but is not required to be an attorney, and may inspect and review evidence;
 - vi. Notice that under District Board Policy JICDA, lying or giving false information, either verbally or in writing to a District employee, may result in disciplinary consequences under the District's Code of Conduct and Discipline;

- vii. Notice of additional allegations not included in the original Complaint of Notice of allegations that the Investigator chooses to investigate.

2. Consolidation of Formal Complaints

- a. Formal complaints may be consolidated when the allegations involve multiple Respondents or multiple Complainants and arise out of the same facts or circumstances.

3. Dismissal of Formal Complaint

- a. The Title IX Coordinator shall dismiss a formal complaint for the following reasons:
 - i. The conduct alleged in the formal complaint would not constitute Title IX sexual harassment, even if proved.
 - ii. The alleged conduct did not occur in the District's educational program or activity.
 - iii. The alleged conduct did not occur against a person in the United States.
- b. The Title IX Coordinator may dismiss a formal complaint for the following reasons:
 - i. At any time during the investigation a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegation therein.
 - ii. The Respondent is no longer enrolled in the District.
 - iii. Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- c. Dismissal of a formal complaint does not preclude action under the District's Code of Student Conduct and Discipline.
- d. Dismissal of a formal complaint does not preclude the option and provision of supportive measures.
- e. Upon dismissal of the formal complaint, the District will provide written notice of the dismissal and the reason(s) for the dismissal to the Complainant and the Respondent, simultaneously.

4. Informal Resolution of Formal Complaints

- a. A formal complaint must be filed prior to proceeding with an informal resolution.
- b. An informal resolution process may not be offered to resolve allegations involving sexual harassment of a student by a District employee.
- c. At any time prior to reaching a determination regarding responsibility, the District may facilitate an informal resolution process.
- d. Parties must both provide voluntary written consent to the informal resolution process.
- e. The informal resolution must include:
 - i. Written notice to the Parties disclosing the allegation;
 - ii. The requirements of the formal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
 - iii. Information that at any time prior to agreeing to a resolution any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
 - iv. Information that any consequence resulting from participating in the informal resolution process will be shared, including that records will be maintained or shared.

- f. Parties are not required under any circumstances to participate in an informal resolution process.

5. Investigation of Formal Complaints

- a. An Investigator, which may be the Title IX Coordinator of the District, will be designated by the District to address the formal complaint.
- b. The Investigator must not have a conflict of interest or bias for or against Complainants or Respondents generally, or an individual Complainant or Respondent.
- c. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the Investigator, not on the Respondent or Complainant.
- d. The Investigator may not access, consider, disclose or otherwise use the Complainant's or Respondent's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party without the written consent of the Party. Further, the Investigator may not access evidence that is protected under a privilege recognized by Federal or State law, or evidence provided as privileged and/or confidential to an employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.
- e. Both Parties will be provided an equal opportunity to present witnesses and other inculpatory or exculpatory evidence.
- f. Neither Party is restricted from discussing the allegations under investigation or gathering and presenting relevant evidence.
- g. Both Parties may be accompanied by other individuals, including an advisor, to any related meeting or proceeding. The District maintains the right to establish restrictions regarding the extent the advisor(s) may participate in the proceedings. Any restrictions on advisor(s) will apply equally to both Parties.
- h. Each Party will be provided with written notice of the date, time, location, participants, purpose of investigative interviews, and sufficient time to prepare for such interviews, when their participation is invited or expected.
- i. Each Party will be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including evidence upon which the District does not intend to rely on in reaching a determination regarding responsibility and inculpatory or exculpatory evidence, so that each Party can meaningfully respond to the evidence prior to the conclusion of the investigation.
- j. Prior to the completion of the investigative report, the Investigator must send to each Party the evidence subject to inspection and review in an electronic format or hard copy.
- k. The Parties will have ten (10) school days to submit a written response, which the Investigator will consider prior to the completion of the investigative report.
- l. After the inspection and response by the Parties, the Investigator shall complete an investigative report that fairly summarizes relevant evidence. The Investigator will send the investigative report to each Party and the Decision Maker in an electronic format or hard copy, for review and written response.

6. Determination

- a. A Decision Maker, which cannot be the Investigator or Title IX Coordinator, will be designated by the District to address the formal complaint.
- b. The Decision Maker must not have a conflict of interest or bias for or against Complainants or Respondents generally, or an individual Complainant or Respondent.

- c. After the Investigator provides the investigative report to the Parties and the Decision Maker, and before the Decision Maker makes a determination regarding responsibility, the Decision Maker will provide the Parties with an opportunity to respond with written relevant questions each Party wants to ask of any Party or Witness, answers to those questions, and an opportunity for follow-up questions.
 - d. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The Decision Maker must explain to the Party proposing the question any decision to exclude a question as not relevant.
 - e. Prior to a determination regarding responsibility, the Decision Maker will provide a reasonably prompt timeframe for the conclusion of the grievance process, and information regarding the informal resolution process of the limited extension of time frames for good cause as identified by the Investigator or Decision Maker, with written notice to the Complainant and Respondent of the delay or extension and the reason for the action. Good cause includes, but is not limited to, considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
7. The Decision Maker will issue a written determination regarding responsibility to Parties simultaneously. The determination regarding responsibility becomes final either on the date that the Decision Maker provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The written determination will include:
- a. Identification of the allegations potentially constituting Title IX sexual harassment;
 - b. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notification to the Parties, interviews with Parties and Witnesses, site visits, methods used to gather other evidence, and hearings held;
 - c. The standard of evidence to be applied;
 - d. Findings of facts supporting the determination;
 - e. Conclusions regarding the application of the District's Student Code of Conduct and Discipline to the facts;
 - i. Disciplinary consequences under the District's Code of Conduct and Discipline include but are not limited to: a written remedial discipline plan, additional training, suspension, dismissal, or expulsion and other disciplinary interventions.
 - f. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the District imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the education program or activity will be provided by the District to the Complainant;
 - g. The District's procedures and permissible bases for the Complainant and Respondent to appeal;
 - h. Notification that Parties have ten (10) school days to file an appeal with the Decision Maker or Title IX Coordinator from the date of the final decision; and
 - i. Include a process that allows for the temporary delay of the filing of an appeal or the limited extension of time frames for good cause as identified by the Decision Maker or Title IX Coordinator, with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action.
8. Appeals
- a. The Parties may appeal a determination regarding responsibility or the District's dismissal of a formal complaint or any allegations therein, on the following basis:

- i. Procedural irregularity that affected the outcome of the matter;
 - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
 - iii. The Title IX Coordinator, Investigator, or Decision Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent individually that affected the outcome of the matter.
- b. The appeal process may not be utilized to solely challenge findings based only on disciplinary consequences, including suspensions and expulsions, and must meet one of the listed above criteria.
- c. A Party must make a written request to the Decision Maker or Title IX Coordinator within ten (10) school days to appeal the decision.
- d. If an appeal is filed:
 - i. Both Parties will be informed in writing when an appeal is filed and appeal procedures will be implemented equally between Parties;
 - ii. The Decision Maker for the appeal will be designated by the District as the Appeal Officer, and will not be the same person as the Decision Maker that reached the determination regarding responsibility or dismissal, the Investigator, or the Title IX Coordinator;
 - iii. After receiving notice of the appeal, both Parties will be provided ten (10) school days and equal opportunity to submit written statements in support of, or challenging, the outcome; and
 - iv. The Appeal Officer for the appeal will issue a written decision simultaneously to the Parties describing the result of the appeal and the rationale for the result.

Recordkeeping

1. The District must maintain records pertaining to the following for a period of seven (7) years:
 - a. Each sexual harassment investigation, including any determination regarding responsibility, as well as:
 - i. Any disciplinary sanctions imposed on the Respondent;
 - ii. Any remedies provided to the Complainant designed to restore or preserve equal access to the District's education program or activity; iii. Any appeal and result therefrom; and iv. Any informal resolution and the result therefrom.
 - b. All materials used to train Title IX Coordinators, Investigators, Decision Makers, and any person who facilitates an informal resolution process; and
 - i. The District shall make these training materials publicly available on its website.
2. Records of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment.
 - a. The District must document the basis for the conclusion that its response was not deliberately indifferent and document that it has taken measures designed to restore or preserve equal access to the District's education program or activity.
 - b. If the District does not provide a Complainant with supportive measures, then the District must document why such a response was not clearly unreasonable in light of the known circumstances.
 - c. The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken.

Retaliation

1. No District employee or student shall retaliate in any way against a person for making a complaint, testifying, assisting, participating, or declining to participate in any manner in an investigation or proceeding under this Board Policy.
2. Intimidation, threats, coercion, or discrimination, including disciplinary action against an individual for Student Code of Conduct Violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment for the purposes of interfering with any right or privilege secured by Title IX or this policy, constitute retaliation.
3. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination under 34 C.F.R. § 106.8(c).
4. The exercise of rights protected by the First Amendment of the United States Constitution does not constitute prohibited retaliation.
5. Students may be disciplined under the Student Code of Conduct for making a materially false statement in bad faith in the course of the grievance proceedings, and such discipline will not constitute retaliation, provided however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.
6. Confidentiality
 - a. The District must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complaint, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, any witness except as may be permitted under FERPA 20 U.S.C. § 1232(g) or the implementing regulations, 34 CFR part 99, or as required by law.

Legal Refs.:

20 U.S.C. § 1681 et seq (Title IX of the Educational Amendments of 1972)
34 C.F.R. § 106.30 (Definitions)
34 C.F.R. § 106.44 (Recipient's Response to Sexual Harassment)
34 C.F.R. § 106.45 (Grievance Process for Formal Complaints of Sexual Harassment)
34 C.F.R. § 106.71 (Retaliation)
34 C.F.R. § 106.8 (Designation of Coordinator, Dissemination of Policy and Adoption of Grievance Procedure)

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