

Davis School District Policy and Procedures

Subject: 5S-102 Student Sexual Harassment Policy
Index: Student- Programs – *Student Conduct and Discipline*
Revised: January 16, 2018

1. PURPOSE AND PHILOSOPHY

To create and preserve an educational environment free from sexual harassment and discrimination on the basis of sex.

2. MONITORING RESPONSIBILITY

The District Compliance Officers as identified in District policy 11IR-100 Nondiscrimination and Complaint Procedure will be responsible for ensuring compliance with this policy.

3. POLICY

- 3.1. It is Davis School District policy to provide an educational environment free from sexual harassment and discrimination on the basis of sex. Under both Title VII of the Civil Rights Act of 1964 and Title IX of the Educational Amendments of 1972, the District considers sexual harassment to be unlawful discrimination on the basis of sex. In addition, discrimination on the basis of sex is prohibited by the Utah Constitution. Finally, sexual harassment/assault by any individual may constitute a sexual crime under Chapter 76 of the Utah Criminal Code.
- 3.2. It shall be a violation of this policy for any student or employee to sexually harass any other student or employee.
- 3.3. The District encourages all victims of sexual harassment and persons with knowledge of sexual harassment to report the harassment immediately.
- 3.4. All complainants have the right to be free from retaliation of any kind.
- 3.5. The District will promptly investigate all formal, informal, verbal and written complaints of sexual harassment, and take prompt corrective action reasonably calculated to end the harassment.
- 3.6. Prohibitions of this policy shall be enforced for conduct occurring outside of school, school hours, or school-related activities and events if the conduct disrupts the educational environment.

4. DEFINITIONS

"Sexual harassment" means unwelcome sexual advances, requests for sexual favors, exposure to pornographic materials, other physical or verbal conduct or communications, including electronic communications of a sexual nature, and any other gender-based harassment, whether initiated by students, school employees, or visitors when:

- 4.1. Submission to the conduct is made explicitly or implicitly a term or condition of a student's education (including any aspect of the student's participation in school-sponsored activities, or any other aspect of the student's education);
- 4.2. Submission to or rejection of the conduct is used as the basis for decisions affecting the student's academic performance, participation in school-sponsored activities, or any other aspect of the student's education;
- 4.3. The conduct has the purpose or effect of unreasonably interfering with a student's academic performance or participation in school-sponsored activities, or creating an intimidating, hostile or offensive education environment.
- 4.4. Both male and female students can be victims of sexual harassment, and the harasser and the victim can be the same sex.

5. UNACCEPTABLE CONDUCT

- 5.1. Complaints received will be thoroughly investigated to determine whether the totality of the behavior and circumstances meet any of the elements of the definitions in section 4 and should be treated as sexual harassment. Unacceptable conduct may or may not constitute sexual harassment. Normally, unacceptable behavior must be severe or pervasive to be considered sexual harassment.
- 5.2. **EXAMPLES:** School-related conduct that the District considers unacceptable and often a part of sexual harassment includes, but is not limited to, the following:
- 5.2.1. 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 Utah Criminal Code;
 - 5.2.2. unwelcome sexual invitations or requests for sexual activity in exchange for grades, preferences, favors, selection for extracurricular activities, homework, etc.;
 - 5.2.3. unwelcome and offensive public sexual display of affection, including kissing, making out, groping, fondling, petting, inappropriate touching of oneself or others, sexually suggestive dancing, and massages;
 - 5.2.4. any unwelcome communication that is sexually suggestive, sexually degrading or implies sexual motives or intentions, such as sexual remarks or innuendoes about an individual's clothing, appearance or activities; sexual gestures; public conversations about sexual activities or exploits; sexual rumors and "ratings lists;" howling, catcalls, and whistles; sexually graphic electronic messages or games, etc.;
 - 5.2.5. unwelcome and offensive name calling or profanity that is sexually suggestive, sexually degrading, implies sexual intentions, or that is based on sexual stereotypes or actual or perceived sexual orientation;
 - 5.2.6. unwelcome physical contact or closeness that is sexually suggestive, sexually degrading, 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.;
 - 5.2.7. unwelcome and offensive physical pranks or touching of an individual's clothing, such as hazing and initiation, "streaking," "mooning," "snuggies" or "wedgies" (pulling underwear up at the waist so it goes in between the buttocks), bra-snapping, skirt "flip-ups," spiking" (pulling down someone's pants or swimming suit); pinching; placing hands inside an individual's pants, shirt, blouse, or dress, etc.;
 - 5.2.8. unwelcome leers, stares, gestures, or slang that are sexually suggestive, sexually degrading or imply sexual motives or intentions;
 - 5.2.9. unwelcome and offensive skits, assemblies, and productions that are sexually suggestive, sexually degrading, or implies sexual motives or intentions or are based on sexual stereotypes;
 - 5.2.10. unwelcome written or pictorial display or distribution of pornographic or other sexually explicit materials such as magazines, videos, films, email, text, web pages, etc.;
 - 5.2.11. any other unwelcome gender-based behavior that is offensive, degrading, intimidating, demeaning, or that is based on sexual stereotypes and attitudes.

6. SITE-LEVEL COMPLAINT PROCEDURES

- 6.1. Students affected by sexual harassment shall be afforded avenues for filing complaints which are free from bias, collusion, intimidation, or reprisal.

- 6.2. Students subjected to sexual harassment are first encouraged to confront the harasser and tell the harasser to stop the conduct because it is unwelcome. Complainants should document the incident(s) of harassment, and any conversations they have with the harasser, noting such information as time, date, place, what was said or done, and other relevant circumstances surrounding the event(s).
- 6.3. If the complainant feels he/she cannot discuss the concerns with the harasser, or if the complainant's concerns are not resolved satisfactorily through a discussion with the harasser, , the complainant should directly inform school staff of the complaint and should clearly indicate what action he/she wants taken to resolve the complaint.
- 6.4. Any school employee who receives a complaint of sexual harassment from a student shall inform the student of the employee's obligation to report the complaint to school administrator, and then shall immediately notify a school administrator.
- 6.5. Complainants who contact school staff with a complaint are encouraged to submit the complaint in writing. However, complaints may be filed verbally. Alternate methods of filing complaints shall be made available to individuals with disabilities who need accommodation.

7. CONFIDENTIALITY

- 7.1. It is District policy to respect the privacy and anonymity of all parties and witnesses to complaints brought under this policy. However, because an individual's right to confidentiality must be balanced with the District's obligations to cooperate with police investigations or legal proceedings, or to investigate and take necessary action to resolve a complaint, the District retains the right to disclose the identity of parties and witnesses to complaints in appropriate circumstances.
- 7.2. Where a complaint involves allegations of child abuse, the complaint shall be immediately reported to appropriate law enforcement authorities and the anonymity of both the complainant and school officials involved in the investigation will be strictly protected as required by Utah Code Ann. §62A-4a-412.

8. SITE-LEVEL INVESTIGATION PROCEDURES

- 8.1. The school administrator has the responsibility to conduct a preliminary review when he/she receives a verbal or written complaint of sexual harassment , or if he/she observes sexual harassment. The site administrator should take the following steps:
 - 8.1.1. Interview the complainant and document the conversation. Instruct the complainant to have no contact or communication regarding the complaint with the alleged harasser. Ask the complainant specifically what action he/she wants taken in order to resolve the complaint. Notify the complainant of his/her right to have someone of the same gender conduct or be present during the interview.
 - 8.1.2. 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.
 - 8.1.3. Instruct the alleged harasser to have no contact or communication regarding the complaint with the complainant and to not take any retaliatory action against the complainant.
 - 8.1.4. If the alleged harasser admits all or part of the allegations, the administrator shall implement appropriate disciplinary action. At a minimum, a written warning/reprimand shall be issued to the harasser and a copy placed in the

student's discipline record/file. If the harasser is an employee, submit a copy of the written warning/reprimand to the District Human Resources Department for inclusion in the harasser's personnel file.

- 8.1.5. If the alleged harasser denies the allegations, promptly conduct a further investigation including interviewing witnesses, if any.
- 8.1.6. Report back to the complainant:
 - [a] that the investigation has been completed;
 - [b] whether or not the evidence supported the claim;
 - [c] any punishments imposed that directly relates to the victim; and
 - [d] instruct the complainant to report immediately if the objectionable behavior occurs again or if the alleged harasser retaliates against him/her.
- 8.1.7. Notify the complainant and his or her parent/guardian that if they are unsatisfied with the outcome of the site-level investigation they may file a complaint according to the provisions of District policy 11IR-100 Nondiscrimination Policy and Complaint Procedure.

8.2. The school administrator must consider the severity or pervasiveness of the conduct and exercise discretion in determining whether a District level investigation is necessary regardless of the complainant's desires. If a blatant violation occurs involving criminal touching, quid pro quo (e.g., offering an academic reward or punishment as an inducement for sexual favors), or acts which shock the conscience of a reasonable person, the complaint should be referred promptly to the appropriate School Director, Assistant Superintendent, Superintendent, Human Resources Director, Case Management, or Compliance Officer/Title IX Coordinator. In addition, where the school administrator has reasonable suspicion that the alleged harassment involves criminal activity, he/she should immediately contact appropriate law enforcement authorities.

8.3. Whenever a sexual harassment complaint is made, the school administrator must take action to investigate the complaint or to refer the complaint for investigation even if the complainant does not request any action or withdraws the complaint.

8.4. Investigations should commence as soon as possible but not later than five (5) working days following receipt of the complaint.

9. RETALIATION PROHIBITION

Any act of reprisal against any person who opposes sexually harassing behavior, or who has filed a complaint, is prohibited and therefore subject to disciplinary action. Likewise, reprisal against any person who has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of a sexual harassment complaint is prohibited and therefore subject to disciplinary action.

10. DISCIPLINE

10.1. Any individual who violates this policy will be subject to appropriate disciplinary action under applicable school discipline policies, District Human Resource policies, and the District- Student Conduct and Discipline policy.

10.2. Depending on the severity or persistence of the harassment, an individual who violates this policy may be subject to suspension, exclusion, probation, termination, or alternate placement. In addition, students who violate this policy may lose the privilege of

participating in extra-curricular activities.

- 10.3. If the accused is a student with a disability whose education involves services under the Individuals with Disabilities Education Act (IDEA) or accommodations under Section 504 of the Rehabilitation Act or the Americans with Disabilities Act (ADA), procedures outlined in the Davis School District Special Education Policy Manual and Utah State Board of Education Special Education Rules shall be followed, including prior written notice to parents or guardians regarding their procedural due process rights, before any long-term disciplinary action or change of placement takes place.

11. FALSE COMPLAINTS

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

12. TRAINING

- 12.1. All new employees shall receive information about this policy at new employee orientation. All other employees shall be provided information on a regular basis regarding this policy and the District's commitment to a harassment-free learning and working environment.
- 12.2. Administrative employees who have specific responsibilities for investigating and resolving complaints of sexual harassment shall receive training on a regular basis on this policy and related legal developments.
- 12.3. School administrator in each school and program directors shall be responsible for informing students and staff of the terms of this policy, including the procedures established for investigation and resolution of complaints.

13. RECORDS

Separate confidential records of all sexual harassment complaints and initial investigations shall be maintained in the principal's office. Records of District level investigations shall be maintained in the office of the Compliance Officer.

- 13.1. Records of initial complaints and investigations shall be retained for at least one (1) year.
- 13.2. Records of District level investigations shall be retained for at least three (3) years.
- 13.3. Records of complaints and investigations of blatant violations involving criminal touching, quid pro quo, other criminal acts, or acts which shock the conscience of a reasonable person shall be retained permanently.

14. DISSEMINATION OF POLICY

A summary of this policy and related materials shall be posted in a prominent place in each District facility. The policy shall also be published in student registration materials, student and employee handbooks, and other appropriate school publications as directed by the District Compliance Officer.

REFERENCES

20 U.S.C. § 1681, Education Amendments of 1972, Title IX.

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

34 C.F.R. §§ 106.1-106.71, U. S. Department of Education Office for Civil Rights Regulations Implementing Title IX.

Requires designation of Title IX Coordinator, grievance procedure, and public notice of Title IX policies and procedures.

42 U.S.C. § 2000e, Civil Rights Act of 1964, Title VII.

Prohibits employers from discriminating on the basis of sex.

29 C.F.R. § 1604.11, Equal Employment Opportunity Commission (EEOC) Regulations Implementing Title VII.

Provides guidelines on sexual harassment in the workplace.

Utah Constitution, Art. IV, § 1.

Both male and female citizens of the State shall enjoy equally all civil, political and religious rights and privileges.

[Utah Code Ann. §§ 76-5-401 through 76-5-407](#)

Criminal Code provisions regarding unlawful sexual intercourse, rape, rape of a child, object rape, object rape of a child, sodomy and forcible sexual abuse, sexual abuse of a child, and aggravated sexual assault.

FORMS AND OTHER LINKS

[DSD Policy 5S-100 Student Conduct and Discipline](#)

[DSD Policy 11IR-100 Nondiscrimination Policy and Complaint Procedure](#)

DOCUMENT HISTORY:

Adopted: August 15, 1995

Revised: March 14, 2006 - Nonsubstantive change section 12.4 discipline for students receiving special education services or accommodations on the basis of disability.

Revised: September 1, 2009 - Not change to content, renumbered from 11IR-104 to 5S-102 with reorganization of Policy Table of Contents.

Revised: March 6, 2012 – This complaint procedure in this policy has been revised to make all complaint procedures standardized throughout District policy.

Revised: January 16, 2018 – Five-year review. Minor revisions to comply with practice.