

## Davis School District Policy and Procedures

**Subject:** 5S-102 Sexual Harassment Under the Jurisdiction of Title IX Protections  
**Index:** Student Services – *Student Conduct and Discipline*  
**DRAFT:** July 7, 2020– **This document is not redlined because of extensive revisions**

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### 1. PURPOSE AND PHILOSOPHY

This policy is adopted to outline the requirements District administrative staff must follow in response to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination in the District's programs and activities.

### 2. MONITORING RESPONSIBILITY

The District Title IX Coordinator will be responsible for ensuring compliance with this policy.

Bianca Mittendorf  
Kendell Building  
P.O. Box 588  
70 East 100 North  
Farmington, UT 84025  
bmittendorf@dsdmail.net  
(801) 402-5319

### 3. POLICY

- 3.1. It is Davis School District policy to provide an educational environment free from sexual harassment under Title IX of the Educational Amendments of 1972.
- 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. District employees who witness sexual harassment; or hear about sexual harassment or sexual harassment allegations from a complainant (i.e., a person alleged to be the victim) or a third party (e.g. the complainant's parent, friend, or peer), are required to report the sexual harassment to a school official with authority to institute corrective measures.
- 3.4. When the District has actual knowledge of sexual harassment in its education program or activity, the District shall respond promptly in a manner that is not unreasonable in light of the known circumstances.
- 3.5. The District shall provide supportive measures designed to restore or preserve access to the District's education program or activity, without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment.
- 3.6. The District may impose disciplinary action against a respondent after a fair grievance process as outlined in this policy. Disciplinary sanction decisions must be made for the purpose of deciding how best to enforce the District's code of student conduct while considering the impact of separating a student from her or his education. Any disciplinary decision must be made as a proportionate response to the violation.
- 3.7. Conduct that does not constitute sexual harassment under this policy shall be addressed in any manner the school deems appropriate under policy 5S-100 Student Conduct and Discipline or the school-level discipline plan.

- 3.8. Employees serving as Title IX Coordinators, investigators, or decision-makers in accordance with this policy shall serve impartially, including avoiding prejudgment of the facts at issue, conflict of interest, and bias.

#### 4. DEFINITIONS

- 4.1. **“Actual knowledge”** means notice of sexual harassment or allegations of sexual harassment to any employee of an elementary or secondary school.
- 4.2. **“Complainant”** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- 4.3. **“Education program or activity”** includes locations, events, or circumstances over which the District exercised substantial control over both the respondent and the context in which the sexual harassment occurs.
- 4.4. **“Jurisdiction under this policy”** means that the conduct alleged meets the definition of sexual harassment as defined in section 4.6 of this policy and occurred in the District’s education program or activity.
- 4.5. **“Respondent”** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- 4.6. **“Sexual harassment”** means conduct on the basis of sex that satisfies one or more of the following:
- 4.6.1. An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual’s participation in unwelcome sexual conduct (commonly known as “quid pro quo”);
  - 4.6.2. 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
  - 4.6.3. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 1229(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 1229(a)(30).
- 4.7. **“Supportive measures”** means 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 when no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the District’s educational environment, or to deter sexual harassment.

#### 5. INITIAL RESPONSE TO REPORTS OF SEXUAL HARASSMENT

- 5.1. **Actual knowledge**  
When a school administrator has actual knowledge of an allegation of sexual harassment that appears to fall under the jurisdiction of this policy, he/she shall:
- 5.1.1. Confidentially discuss the availability of supportive measures with or without filing a formal complaint with the complainant.
  - 5.1.2. Consider the complainant’s wishes with respect to supportive measures.
  - 5.1.3. Explain to the complainant the process for filing a formal complaint.
  - 5.1.4. Evaluate any applicable safety concerns (see section 5.2).
  - 5.1.5. Determine the obligation to proceed with a formal investigation if the complainant does not wish to file a formal complaint (see section 5.3).
  - 5.1.6. Refer any reports alleging that an employee sexually harassed a student to the Title IX Coordinator regardless of the complainant’s wishes.

- 5.2. Safety concerns
  - 5.2.1. The school must follow a grievance process for alleged conduct under the jurisdiction of Title IX before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent, unless the school administrator determines there is a safety concern.
  - 5.2.2. School administration may remove a student respondent from the District's education program or activity on an emergency basis, provided the District:
    - [a] undertakes an individualized safety and risk analysis;
    - [b] determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and
    - [c] provides the respondent with notice and an opportunity to challenge the decision immediately following the removal through the District Case Management Team.
  - 5.2.3. Human Resources may place a non-student employee respondent on administrative leave during the pendency of a grievance process.
  - 5.2.4. These provisions may not modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.
- 5.3. Obligation to proceed with formal investigation  
The complainant's wishes with respect to whether the school investigates should be respected, unless the school administrator determines that not doing an investigation as outlined in this policy is clearly unreasonable in light of the known circumstances. He/she must report the allegations to the Title IX Coordinator. Given the known circumstances the Title IX Coordinator may file a formal complaint to initiate an investigation over the wishes of the complainant, recognizing the difficulty of pursuing the investigation without the cooperation of the complainant.

## **6. FORMAL COMPLAINT**

- 6.1. A complainant (i.e., a person alleged to be the victim) or a third party (e.g. the complainant's parent, friend, or peer), may request an investigation of the allegation of sexual harassment by filing a written complaint to a school administrator or the District Title IX Coordinator.
- 6.2. If the school administrator determines conduct likely falls under the jurisdiction of this policy and the complainant decides not to file a formal complaint, the Title IX Coordinator may file a formal complaint. The Title IX Coordinator is not a complainant or a party during a grievance process and must comply with requirements for personnel to be free from conflicts and bias.

## **7. GRIEVANCE PROCESS ALLEGING STUDENT-TO-STUDENT SEXUAL HARASSMENT**

- 7.1. Notice of allegations
  - 7.1.1. Upon receipt of a formal complaint, a school administrator shall simultaneously provide all known parties with written notice of the allegations potentially constituting sexual harassment as defined in this policy, with sufficient time to prepare a response before any initial interview.
  - 7.1.2. The notice of allegations shall:
    - [a] Disclose the sexual harassment allegations including:
      - (i) identities of the known parties involved in the incident;
      - (ii) the conduct allegedly constituting sexual harassment; and
      - (iii) the date(s) and location(s) of the alleged incident(s), if known.

- [b] Provide notice of any other possible policy violations known at the time.
- [c] A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- [d] Provide notice informing each party that they may have an advisor of their choice to accompany the party at any related meeting or proceeding, at the party's own expense.
- [e] Anticipated timeframe to complete the investigation and remainder of the grievance process.
- [f] Inform parties of their right to submit and review evidence throughout the investigative process.
- [g] Provide notice of the prohibition of knowingly making false statement or knowingly submitting false information during the grievance process.
- [h] Describe the range of possible disciplinary sanctions that may be implemented following any determination of responsibility.
- [i] Describe the range of supportive measures available to complainant and respondent.
- [j] Provide notice of the option to participate in an informal resolution process that does not involve a full investigation and grievance process.
- [k] Obtain the parties' voluntary written consent if the parties agree to pursue an informal resolution process.

7.1.3. If, in the course of an investigation, the school decides to investigate allegations about the complainant or respondent that are not included in the notice provided, the school must provide notice of the additional allegations to the parties whose identities are known.

## 7.2. Informal Resolution Process

7.2.1. Upon receipt of the notice of allegations, the parties may voluntarily agree in writing, to participate in an informal resolution that does not involve a full investigation and grievance process, if the claim is not alleging employee on student sexual harassment; and the school administrator determines that the particular Title IX complaint is appropriate for such a process.

7.2.2. A school administrator may facilitate an informal resolution, including supportive measures, mediation, or restorative justice, to assist the parties in reaching a voluntary resolution.

7.2.3. 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. The parties are precluded from resuming a formal complaint arising from the same allegations once an informal resolution is agreed to.

## 7.3. Investigation of Formal Complaint

### 7.3.1. Investigation

A school administrator or the Title IX Coordinator must promptly investigate every formal complaint unless all parties agreed to an informal resolution process.

- [a] The investigation process must incorporate due process principles that treats all parties fairly and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.
- [b] When investigating a formal complaint, a school administrator or Title IX Coordinator is responsible to gather evidence sufficient to reach a determination of responsibility. However, the investigation must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- [c] Before any interview or other meeting in which a parties' participation is

invited or expected, the school administrator or Title IX Coordinator must provide clear written notice to allow sufficient time to prepare to participate. The notice must include, date, time, location, participants, and the purpose of the investigation or meeting.

- [d] While the burden of gathering evidence is the responsibility of the school administrator or Title IX Coordinator, the parties may gather and present relevant evidence to the school administrator or Title IX Coordinator during the investigative process.
- [e] When the school administrator or Title IX Coordinator has reasonable suspicion that the alleged sexual harassment involves criminal activity, he/she should immediately contact appropriate law enforcement authorities.

7.3.2. Notice of evidence

Both parties shall have 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 inculpatory or exculpatory evidence whether obtained from a party or other source, so each party can meaningfully respond to the evidence prior to the conclusion of the investigation.

- [a] The evidence subject to inspection and review shall be provided to each party simultaneously and the party's advisor, if any, in an electronic format or a hard copy.
- [b] The parties must have at least ten (10) days after receiving the evidence gathered during the investigation to submit a written response which the Title IX Coordinator will consider prior to completion of the investigative report.
- [c] The school administrator, acting as an investigator, shall provide the evidence and any written response received from the parties to the Title IX Coordinator to prepare an investigative report.

7.3.3. Investigative report

When the investigation and review of evidence is complete, the Title IX Coordinator shall:

- [a] Create an investigative report that fairly summarizes relevant evidence and objective findings, but no conclusions as to violation of policy;
- [b] Send investigative report to each party simultaneously, and the party's advisor, if any; and
- [c] Provide the investigative report to the District Review Committee to make a determination of responsibility.

7.3.4. Dismissal of a formal complaint

- [a] If, during an investigation, the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this policy, even if proved, the school administrator or Title IX Coordinator must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX and this policy; or if circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. Such a dismissal does not preclude action under another provision of District or school policy.
- [b] The District may dismiss the formal complaint or any allegations therein, if at any time during the investigation or determination of responsibility process; a complainant notifies the school administrator or Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein.
- [c] Upon a dismissal of a formal complaint, the school administrator or Title IX Coordinator shall promptly send written notice of the dismissal with the reason(s) on which it is based, simultaneously to the parties and their advisors, if any, with notice of procedures and permissible bases for

complainant and respondent to appeal the decision.

- 7.4. Determination regarding responsibility
  - 7.4.1. The District Review Committee (Committee) shall serve as the decision-making body.
  - 7.4.2. After receiving the investigative report from the Title IX Coordinator and before reaching a determination regarding responsibility, the Committee shall:
    - [a] afford the parties an opportunity to submit written, relevant questions that a party wants asked of any party or witness;
    - [b] provide each party with the answer; and
    - [c] allow additional, limited follow-up questions.
  - 7.4.3. The Committee is responsible to determine if a question is relevant to the proceeding and shall explain to the party proposing the question any decision to exclude a question as not relevant.
  - 7.4.4. The period to submit written questions and receive answers shall be no more than ten (10) days.
  - 7.4.5. After considering the investigative report and any additional information gathered through the question/answer period, the Committee shall:
    - [a] make a determination of responsibility based on a preponderance of the evidence;
    - [b] issue a written determination regarding responsibility including:
      - (i) any disciplinary sanctions imposed; and
      - (ii) procedures and permissible bases for the complainant and respondent to appeal the decision.
- 7.5. Extension of Time  
Any time limits established by this policy and these procedures may be extended for good cause by mutual consent of the parties involved.

## **8. SUPPORTIVE MEASURES AND DISCIPLINARY SANCTIONS**

- 8.1. Supportive measures may include counseling, clinical assessment, community resource facilities, extension of deadlines or other course-related adjustments, one on one mentoring, modifications of class schedules, increased security and monitoring of certain areas of the campus, mutual restrictions on contact between the parties; and other similar measures.
- 8.2. Disciplinary sanctions may include school suspension, re-directed schedule, exclusion, alternative placement, losing the privilege of participating in extra-curricular activities, employee probation or termination; and other similar measures.

## **9. APPEALS**

- 9.1. Either party may appeal the dismissal of a formal complaint or the determination regarding responsibility in writing within five (5) calendar days after receipt of a notice of dismissal or the determination regarding responsibility, to the Title IX Coordinator, who shall forward the appeal to the District's Appeal Body.
- 9.2. Appeals may be heard on the following bases:
  - 9.2.1. Procedural irregularity that affected the outcome of the matter;
  - 9.2.2. 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; or
  - 9.2.3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents that affected the outcome of the matter.

Appeals based on rationale not outlined above will be denied.

- 9.3. The Appeal Body shall:
  - 9.3.1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
  - 9.3.2. Give both parties a reasonably equal opportunity to submit a written statement in support of, or challenging, the outcome.
  - 9.3.3. Send to each party simultaneously and the party's advisor, if any, a final written decision describing the result of the appeal and the rationale for the result.
- 9.4. The final written decision of the Appeal Body shall serve as the final administrative action in the matter.

**10. GRIEVANCE PROCESS ALLEGING EMPLOYEE-TO-STUDENT QUID PRO QUO HARASSMENT**

The same grievance process shall apply to cases alleging quid pro quo as defined in section 4.6.1 of this policy, except; the investigator shall be the Title IX Coordinator and the determination of responsibility decision-maker shall be the Director of Human Resources with oversight of the Superintendency.

**11. RETALIATION**

- 11.1. No person may threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or grievance procedure.
- 11.2. Charges against an individual for 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 purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.
- 11.3. All students involved in the investigation shall be instructed that retaliation is prohibited and subject to disciplinary action.

**12. PRIVACY OF STUDENT INFORMATION**

It is District policy to respect the privacy and anonymity of all parties and witnesses to complaints brought under this policy. However, if there is a conflict between the Family Educational Rights and Privacy Act (FERPA) and the Title IX Regulations as outlined in this policy, the Title IX regulations will prevail. (*34 CFR §106.6(e)*)

**13. RECORDKEEPING**

The District must maintain for a period of seven years records of each sexual harassment investigation under this policy, to include:

- 13.1. Investigative reports and written responses of complainant and respondent;
- 13.2. Any determination regarding responsibility and sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the District's programs;
- 13.3. Any appeal and the result;

- 13.4. Any informal resolution and the result;
- 13.5. Any supportive measures taken in response to a report or formal complaint of sexual harassment;
- 13.6. Dismissal of formal complaint; and
- 13.7. All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

**14. TRAINING**

The District shall ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receives training on the definition of sexual harassment, the scope of the District's education program or activity, how to conduct an investigation and grievance process including appeals. Training shall include how to serve impartially. Training shall be publicly available on the District's website.

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**DEFINITIONS**

See section 3 of this policy for statutory definitions.

“**Appeal Body**” includes the Director of Equity, Director of Teaching and Learning, and the Director of Custodial Services.

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**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 CFR §106 Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

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**RELATED POLICIES**

DSD Policy 5S-100 Student Conduct and Discipline

DSD Policy 11IR-110 Student Data and Family Privacy Protection

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**DOCUMENT HISTORY:**

**Adopted: August 15, 1995**

**Revised: March 14, 2006** – Non-substantive change regarding discipline for students receiving special education services or accommodations on the basis of disability.

**Revised: September 1, 2008** – No change to content, renumbered from 11IR-104 to 5S-102 with reorganization of Policy Table of Contents.

**Revised: March 6, 2012** – The 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.

**Revised:** \_\_\_\_\_ - Extensive revisions to comply with new Title IX regulations issued on May 6, 2020 by the Department of Education.