

Davis School District Policy and Procedures

Subject: 2HR-206 Employee Sexual Harassment Policy Under the Jurisdiction of Title VII

Index: Human Resources – *Employee Rights and Responsibilities*

Revised DRAFT: ~~November 21, 2017~~ August 18, 2020

1. PURPOSE AND PHILOSOPHY

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

2. POLICY

Employee sexual harassment shall not be tolerated in the workplace. The District shall take all necessary steps to ensure that this type of conduct is prevented before it becomes severe and/or pervasive. Violators shall be subject to disciplinary action up to and including dismissal from employment and referral for criminal prosecution.

3. DEFINITION UNDER TITLE VII

~~Sexual harassment is a form of unlawful employment discrimination that involves any gender related unwelcome written or verbal slurs, vulgar jokes, derogatory statements or actions.~~ Harassment on the basis of sex is a violation of section 703 of Title VII. Sexual harassment also includes unwelcome Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- 3.1. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment; or
- 3.2. Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or
- 3.3. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting him/her.

~~Specific examples of conduct that constitute sexual harassment are outlined in Section 5 of the District's Student Sexual Harassment Policy.~~

4. SITE-LEVEL COMPLAINT PROCEDURES

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

- 4.1. Complainants first are encouraged to verbalize disapproval of the action(s) to the harasser. Complainants should document the occurrence(s), noting such information as time, date, place, what was said, witnesses, and other relevant circumstances surrounding the event.
- 4.2. If the complainant's concern(s) are not resolved satisfactorily through a discussion with the harasser, or if the complainant feels that he/she cannot discuss the concern(s) with the harasser, the complainant should directly inform the immediate supervisor regarding the complaint and should clearly indicate what action he/she wants taken to resolve the complaint. Complainants who decide to contact the immediate supervisor are strongly encouraged to submit the complaint in writing. However, they may convey the complaint verbally to the immediate supervisor. In situations where the immediate supervisor is the alleged harasser, the complainant should submit the complaint directly to the principal, District department head, School Director, or the Human Resources Director. The complainant may request to submit the complaint to or have the complaint investigated

by a representative of the same gender.

- 4.3. Confidentiality will be protected to the extent practical under the law and under the necessities of investigating the complaint and taking appropriate disciplinary action.

5. SITE-LEVEL INVESTIGATIONS PROCEDURES

The supervisor has the responsibility to conduct a preliminary review when he/she receives a verbal or written complaint from a victim or other individual or observes sexual harassment. The supervisor should take the following steps:

- 5.1. 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.
- 5.2. Interview the alleged harasser regarding the complaint and inform the alleged harasser that, if the objectionable behavior has occurred, it must cease. Document the conversation.
- 5.3. 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.
- 5.4. 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 employee's file.
- 5.5. If the alleged harasser denies the allegations, promptly conduct a further investigation including interviewing witnesses, if any.
- 5.6. Report back to the complainant:
 - 5.6.1. that the investigation has been completed;
 - 5.6.2. whether or not the evidence supported the claim;
 - 5.6.3. any punishment imposed that directly relate to the victim; and
 - 5.6.4. instruct the complainant to report immediately if the objectionable behavior occurs again or if the alleged harasser retaliates against him/her.
- 5.7. Notify the complainant that if he/she is unsatisfied with the outcome of the site-level investigation he/she may file a complaint according to the provisions of District policy 11IR-100 Nondiscrimination Policy and Complaint Procedure.
- 5.8. The supervisor must exercise discretion as to the severity or pervasiveness of the conduct in determining whether a District level investigation under Title IX protections is necessary ~~regardless of the complainant's desires~~. If a blatant violation occurs involving criminal touching, quid pro quo (e.g., offering a job-related reward or punishment as an inducement for sexual favors), or acts which shock the conscience of a reasonable person or involves a student, (see: definition of sexual harassment under Title IX); the complaint should be referred promptly to the appropriate School Director, ~~Assistant Superintendent, Superintendent, or Human Resources Director~~ who will be responsible to conduct an investigation and grievance process as outline in District policy 5S-102 Sexual Harassment Under the Jurisdiction of Title IX Protections; ~~except that the investigator shall be the appropriate School Director; and the decision-maker shall be the Director of Human Resources with oversight of the Superintendency.~~
- 5.9. Whenever a sexual harassment complaint is made, the supervisor must take action to investigate the complaint or to refer the complaint for investigation even if the complainant does not request action.

- 5.10. Investigations should commence as soon as possible, but not later than five (5) workdays following receipt of the complaint.

6. 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.

7. FALSE COMPLAINTS

False, malicious, or frivolous complaints of harassment will result in corrective or disciplinary action taken against the accuser.

8. RECORDS

Separate confidential records of all sexual harassment complaints and initial investigations shall be maintained in the supervisor's office. Records of District level investigations under Title IX protections shall be maintained in the Human Resources Department.

- 8.1. Records of initial complaints and investigations and District level investigations shall be retained for at least three (3) years after complaint or litigation is resolved and then destroyed.
- 8.2. Records of complaints and investigations ~~of blatant violations involving criminal touching, quid pro quo, or acts which shock the conscience of a reasonable person under the jurisdiction of Title IX protections~~ shall be retained for seven (7) years after complaint or litigation is resolved and then destroyed.

9. TRAINING

- 9.1. 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.
- 9.2. 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.
- 9.3. Principals 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.

DEFINITIONS

“Sexual Harassment” as defined in Title IX, means conduct on the basis of sex that satisfies one or more of the following: 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”); 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; 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).

REFERENCES

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

Prohibits employers from discriminating on the basis of sex.

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 benefit of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

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

Implementing Title VII. Provides guidelines on sexual harassment in the workplace.

34 C.F.R. § 160 Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

Implementing Title IX. Provides guidelines on sexual harassment in the District’s education program or activity.

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.

OTHER RESOURCES AND LINKS

[Sexual Harassment Pamphlet](#)

[DSD Policy 5S-102 Sexual Harassment Under the Jurisdiction of Title IX Protections](#)

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

DOCUMENT HISTORY:

Adopted: August 15, 1995

Revised: September 1, 2009 - No content change, renumbered from 11IR-105 to 2HR-120 with reorganization of Policy Table of Contents.

Revised: October 5, 2010 - As part of a five-year review, including of the Table of Contents, policy was renumbered from 2HR-120 to 2HR-206. Changed record retention section and annual training of administrators to “regular basis,” instead of yearly.

Revised: March 6, 2012 – The complaint procedure was revised to make all complaint procedures standardized throughout District policy.

Revised: November 21, 2017 - Five-year review. No substantive changes.

Revised: [- Revised to clarify that protections of Title IX may apply to employees in an educational setting when alleged conduct rises to the level of sexual harassment as defined in Title IX regulations.](#)