

SECTION:

TITLE: NONDISCRIMINATION ON THE BASIS OF SEX
IN DISTRICT PRACTICES

	<p>Harassment on the basis of a sex is a form of unlawful discrimination and is prohibited by federal law under Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681-1688), in all educational programs or activities that receive federal financial assistance. This policy exhibits the District's commitment to implement measures to comply with Title IX.</p> <p><u>What Is Title IX?</u> Title IX states:</p> <p style="padding-left: 40px;">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.</p> <p><u>Definition of Sexual Harassment</u> For purposes of this policy, "sexual harassment" is defined as conduct on the basis of sex that satisfies one or more of the following:</p> <ol style="list-style-type: none">(1) An employee of the school district conditioning the provision of an aid, benefit, or service of the school district on an individual's participation in unwelcome sexual conduct; also called <i>quid pro quo</i> (this for that) sexual harassment(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 school district's education program or activity; or(3) Sexual assault, dating violence, domestic violence, or stalking. <p>Note that the qualification of "severe, pervasive, and</p>
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objectively offensive” applies only to “unwelcome conduct,” and does not apply to incidents of *quid pro quo* sexual harassment, sexual assault, dating violence, domestic violence, or stalking. A single incident of these offenses is sufficient to constitute sexual harassment.

Examples of Sexual Harassment

Sexual harassment can be verbal, nonverbal, or physical conduct of a sexual nature. Since sexual harassment is conduct, it can occur to any individual, regardless of sex, gender orientation or transgender status. Every person, regardless of demographic or personal characteristics or identity, e.g., LGBTQ or transgender, is entitled to the same protections from sexual harassment under this policy, and every individual shall be treated with equal dignity and respect.

Additional Definitions

- Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a school district's Title IX Coordinator or to any employee of the school district.
- Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- Dating violence is defined in 34 U.S.C. 12291(a)(10).
- Deliberate indifference means that the school district's response to sexual harassment is clearly unreasonable in light of the known circumstances.
- Domestic violence is defined in 34 U.S.C. 12291(a)(8)
- Due process means that an accused perpetrator is entitled to presumption of non-responsibility, notice of the accusation, and a meaningful opportunity to respond to the allegation(s) in a meaningful time.
- Education program or activity includes locations, events, or circumstances over which the school or school district exercises substantial control over both the respondent and the context in which the sexual harassment occurs
- Formal complaint means a document signed by a complainant and the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school district investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school district. However, a formal complaint is not required for supportive measures that

must be provided to anyone filing a formal or informal complaint.

- Rape shield laws limit the introduction of evidence or cross-examination of a rape complainant about past sexual behavior.
- Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- Sexual assault is defined in 20 U.S.C. 1092(f)(6)(A)(v).
- Stalking is defined in 34 U.S.C. 12291(a)(30).

When/Where Title IX Applies

Title IX prohibits sexual harassment that happens in a school's "education program or activity." This includes locations, events, or circumstances where the school district exercises substantial control over the person accused of committing the sexual harassment and the context in which the harassment occurs. Title IX does not apply to off-campus sexual harassment unless (1) the harassment occurred as part of the school district's operations, and (2) the district exercised substantial control over the alleged harasser and the circumstances in which the harassment occurred. If the school district is not required to respond under Title IX, the district may take action under its student or staff codes of conduct. Additionally, Title IX applies only when students are physically in the United States.

Authority

The district adopts this policy to comply with requirements set forth by the U.S. Department of Education Final Rule published in the Federal Register on May 19, 2020 after notice and comment rulemaking.

Guidelines

The district shall designate a Title IX Coordinator who shall be responsible for dissemination and implementation of this policy. The Title IX Coordinator shall be trained in the requirements of this sexual harassment policy, and the identification and contact information for the Title IX Coordinator shall be widely disseminated throughout the district by posting of information on the district website and written notices in every district building and in district publications and the local press.

Notice of Sexual Harassment

The district receives notice of sexual harassment when a complaint is made to the Title IX Coordinator or to any

employee of the school district. Any person, whether the person is the alleged victim or a parent, friend, or witness to sexual harassment, may file a complaint of sexual harassment. Complaints may also be filed anonymously. Any employee who receives a complaint of sexual harassment in person or by any means of communication, or who witnesses sexual harassment, shall promptly report the complaint to the Title IX Coordinator, whether during business hours or not, using the Coordinator's contact information. However, no statute of limitations applies to filing a complaint of sexual harassment.

Response to Notice of Sexual Harassment

When notice of sexual harassment is received by the Title IX Coordinator or by any district employee, the district is considered to have actual knowledge of the complaint of sexual harassment, and has a duty to respond in a manner that is not deliberately indifferent. The district's response will be considered deliberately indifferent only if it is clearly unreasonable. Upon receipt of the complaint, the Title IX Coordinator shall provide supportive measures to both the complainant (the alleged victim of sexual harassment) and to the respondent (the alleged perpetrator of the sexual harassment) in order to restore or preserve equal educational access for both parties, without treating a respondent as responsible until the conclusion of a fair and impartial grievance process as described below.

The respondent to a complaint of sexual harassment may be removed from school on an emergency basis if reasonable threat of harm is present.

If the respondent is an employee, the employee may be placed on administrative leave during the investigation.

In both cases of emergency removal or placement on administrative leave, the due process rights of the accused must be preserved by providing notice of the charges and an opportunity to respond.

Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available, without fee or charge, to both the complainant and the respondent. Such supportive measures must be made available before or after the filing of a formal complaint or where no formal complaint has been filed, to both students and employees. Such measures shall not unreasonably burden either party, but shall be designed to protect the safety of all parties and the educational environment, or to deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or

other curriculum-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The Title IX Coordinator must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability to provide the supportive measures.

Duties of the Title IX Coordinator

The Title IX Coordinator must be free from conflicts of interest and bias and trained in how to serve impartially and avoid prejudgment of the facts at issue. The Title IX Coordinator may develop and deliver awareness and educational programming for faculty, staff, students, parents, and community members.

The Title IX Coordinator shall:

- Maintain current contact information and notices of non-discrimination
- Receive reports of sexual harassment in any mode, in person, online, telephone or U.S. Mail, at any time, including non-business hours, through the contact information widely disseminated
- Act promptly upon receipt of a complaint, providing information about supportive measures and abiding by the desires of the complainant, notifying the complainant about the right to file a complaint and information on how to file a complaint
- Sign formal complaints along with the complainant (or the complainant's parents or legal caregiver) to initiate an investigation
- Advise the complainant of the option of informal resolution of complaints, e.g., by mediation
- Dismiss complaints on written notice from the complainant or complaints that do not meet the definition of sexual harassment above
- Initiate and conduct an investigation of the complaint, or appoint an alternate or co-investigator
- Keep records of the investigative steps, conduct interviews of complainant and respondent, document witnesses' statement, compile the investigative report
- Arrange for live hearings, if they are to be conducted, and train in use of any technology to be used during a live hearing
- Be aware of and look for and document patterns of

complaints and patterns of allegations against individual respondents

The Title IX Coordinator must maintain the records of all investigations for seven years.

Note that at the completion of the written investigative report, the Title IX Coordinator must turn the investigation over to an independent decision-maker who shall determine whether sexual harassment occurred and impose disciplinary sanctions as appropriate. The decision-maker shall reach a determination regarding responsibility by applying the standard of evidence the district has designated for use in all formal complaints of harassment, the preponderance of the evidence standard (that is, it is more likely than not the harassment occurred). The decision-maker must simultaneously send both parties a written determination explaining the reasons for the outcome.

The grievance procedure and appeal process are described more fully below.

If the Title IX Coordinator is the subject of the complaint, the School Board shall appoint a qualified independent investigator to handle the complaint.

Retaliation

Retaliation for reporting a complaint of sexual harassment is prohibited. However, prohibition of retaliation shall not chill or infringe an individual's fundamental First Amendment rights.

Making False Statements

Intentionally making false statements in bad faith may be disciplined under the district code of conduct.

The Grievance and Appeals Processes

Basic Requirements of the Grievance Process

The school district's grievance process shall:

- Treat complainants and respondents equitably by providing supportive measures to both parties and by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent
- Design remedies so that equal access to the district's education program or activity is restored or preserved. Remedies shall require an objective evaluation of all relevant evidence – including both inculpatory and

exculpatory evidence – and provide that credibility determinations may not be based on a person’s status as a complainant, respondent, or witness

- Authorize the Title IX Coordinator as investigator, with authority to designate alternate investigators or co-investigators
- Ensure that all investigators receive training to identify relevant issues and collect those issues in the summary of the investigation
- Include a presumption that the respondent is not responsible for the alleged conduct until a responsibility determination is made at the conclusion of the grievance process
- Include in the grievance process reasonably prompt time frames for conclusion of the process, including reasonably prompt time frames for filing and resolving appeals, and a process that allows for a temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include 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
- May not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, for example, physician-patient confidentiality or rape shield laws, unless the person holding such privilege has waived the privilege
- Shall, as stated above, ensure that the Title IX Coordinator retain all records pertaining to the investigation, determination of responsibility, outcome of any appeal(s), and documentation of supportive measures and remedies for seven years
- Provide that all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process be made public upon request for inspection by members of the public

Informal Resolution of Complaints

- An informal resolution process may be initiated after filing of a formal complaint signed by both the complainant and the Title IX Coordinator
- At any time prior to reaching a determination regarding responsibility, even after a formal complaint

investigation has begun, either party may voluntarily seek an informal resolution, such as mediation, that does not involve a full investigation and adjudication, but written request of both parties must be provided to the Title IX Coordinator

- The Title IX Coordinator must provide the parties with a written notice disclosing the allegations
- At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the formal grievance process
- For an informal resolution, any individual designated to facilitate the informal resolution shall be trained in the provisions of this policy and in informal resolution processes, and must be unbiased and impartial
- NOTE: The informal resolution process cannot be used to resolve allegations that an employee sexually harassed a student.

Formal Resolution of Complaints

Upon receipt of a formal complaint, the Title IX Coordinator must provide the following written notice to the parties who are known:

- Notice of the allegations
- Notice of the elements of the district's grievance process, including any informal resolution process
- Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and giving parties sufficient time to prepare a response before any initial interview
- The written notice must include 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.
- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and that they may inspect and review evidence
- The written notice must inform the parties of any provision in the student Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process
- If the Title IX Coordinator decides to investigate allegations about the complainant or respondent that

are not included in the original notice, the Title IX Coordinator must advise the parties

Investigation of a Formal Complaint

When investigating a formal complaint, the Title IX Coordinator and any co-investigator(s), as well as any investigators appointed by the Title IX Coordinator must:

- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence
- Not restrict either party from discussing the allegations under investigation or from gathering and presenting relevant evidence
- Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. However, the investigator may establish restrictions regarding the extent to which any advisor may participate in the proceeding, and these restrictions must be applied uniformly to all advisors
- Provide, to a party whose participation is invited or expected, written notice as described above
- Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation

Prior to completion of the investigative report, the Title IX Coordinator must send to each party and the party's advisor, if any, the evidence subject to inspection and review, in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.

The Title IX Coordinator shall create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a live hearing (if a hearing will be scheduled), send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

Dismissal of a Formal Complaint

The Title IX Coordinator may dismiss a formal complaint if the conduct alleged in the formal complaint (1) would not constitute sexual harassment even if proved, (2) did not occur in the district's education program or activity, (3) the

complainant requests dismissal of the complaint in writing, or (4) if the conduct did not occur against a person physically in the United States.

The Title IX Coordinator may also dismiss the complaint if the respondent is no longer enrolled or employed by the school district; or specific circumstances prevent the Title IX Coordinator from gathering evidence sufficient to determine if sexual harassment occurred.

If the formal complaint is dismissed, the Title IX Coordinator must promptly send written notice of the dismissal and reason(s) simultaneously to the parties.

Live Hearings

The provision of a live hearing in a resolution of a formal complaint is optional at the elementary and secondary levels. If the school district grievance process requires a live hearing, the hearing shall be held after the Title IX Coordinator has sent the investigative report to the parties and before a determination of responsibility is final. If a live hearing is scheduled, either party to the formal complaint may request that the parties and their advisors be in separate rooms and communicate via technology and not in person. Advisors to the parties, but not the actual parties, may question and cross-examine parties and witnesses on relevant issues and evidence, and credibility determinations, but the decision-maker at the live hearing may refuse to admit non-relevant questions. The decision-maker may also limit the opportunity for advisors to participate.

If a party does not have an advisor who can be present at the live hearing, the school district must provide an advisor of the district's choice without fee or charge to that party, who may be, but is not required to be, an attorney. The Title IX Coordinator must see that an audio or audiovisual recording or transcript of any live hearing is created, and make a copy available to the parties for inspection and review.

If a live hearing is not part of the district's grievance process, after the Title IX Coordinator has sent the investigative report to the parties and before a determination of responsibility is final, the decision-maker must allow each party the opportunity to submit written relevant questions to any party or witness, receive answers, and allow for additional limited follow-up questions from each party.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged.

Determination of Responsibility

After the Title IX Coordinator creates the investigative report, the Title IX Coordinator must hand over the report to an independent decision-maker who shall issue a written determination regarding responsibility arrived at by using the preponderance of evidence standard.

The written determination must be provided to both parties simultaneously and must include the following:

- Identification of the allegations potentially constituting sexual harassment
- Description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
- Findings of fact supporting the determination
- A statement of the result and rationale for each allegation, including any disciplinary sanctions for the respondent, and whether remedies will be provided to the complainant

The final determination must also provide information about procedures and bases for appeal for either party.

If an appeal is filed, the determination becomes final on the date the appeal decision is supplied in writing to the parties. If neither party files a timely appeal, the determination is final when the appeal time limit expires

The Appeals Process

Appeals can be filed for procedural irregularity that affected the outcome of the matter, new evidence that became available and that could have affected the outcome of the matter; or a provable conflict interest or bias on the part of the Title IX Coordinator, investigator(s), or decision-maker(s). A new impartial decision-maker(s) not previously involved with the case must decide the appeal and provide a written decision simultaneously to both parties describing the result of the appeal and the rationale for the result.

When the final determination of responsibility is made and appeals are exhausted, the Title IX Coordinator is responsible for effective implementation of any remedies.

Publications Required

The provisions of this policy shall be disseminated throughout the district and community and training in the policy requirements shall be provided to employees, including staff and faculty, students, parents, and community members.