Book	Policy Book
Section	SECTION 03-GENERAL SCHOOL ADMINISTRATION
Title	Sexual Harassment Under the Jurisdiction of Title IX
Code	3100
Status	Active
Adopted	March 15, 2022

Sexual Harassment Under the Jurisdiction of Title IX

I. Purpose and Philosophy

A. Park City School District will comply with the requirements of Title IX of the Education Amendments of 1972. Pursuant to Title IX, the District does not discriminate on the basis of sex in its education programs or activities. This policy is adopted to set forth the requirements the Park City School District (PCSD and/or District) must follow to give effect to regulations published by the United States Department of Education that require the adoption of certain procedures in connection with Title IX complaints involving sexual harassment, as defined herein.

B. This policy and its procedures shall be effective only as long as the Title IX regulations requiring them are effective and not withdrawn. In the event of withdrawal, issues that might constitute sexual harassment shall be addressed under other applicable District policies, including, but not necessarily limited to 1000 - Harassment and Non-Discrimination; 1001 - Code of Conduct; 7005 - Employee Ethics; 10001 - Bullying, Cyberbullying, Harassment, Hazing, Discrimination, and Retaliation; 10100 - Safe Schools and/or the school-level discipline plan.

III. Definitions

A. Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to any employee of an elementary or secondary school.

B. “Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

C. “Consent” means knowing and voluntary permission by words or actions. Consent may be withdrawn through words or actions at any time. Consent cannot be obtained through use of physical force, violence, concealment or surprise, coercion, extortion, or the threat of retaliatory action against the victim or another person; it cannot be given be a person who lacks the mental capability to grant consent or who is unconscious, unaware, incapable of resistance, or has been unknowingly administered a behavior altering substance; consent cannot be given by a person younger than 14 years of age; cannot be given by a person younger than 18 to a person more than three years older; and cannot be given by a person younger than 18 to a person in a position of special trust, such as a teacher, coach, or any other person employed by the District.

D. “Dating Violence” is defined in 34 U.S.C. § 12291(a)(10) and means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. This

includes sexual or physical abuse, or the threat of such abuse, but does not include acts included within the definition of “domestic violence.” The existence of a relationship shall take into account the reporting party’s account and may include consideration of the length and type of relationship as well as the frequency of interactions between the parties in the relationship.

E. “Domestic Violence” is defined in 34 U.S.C. § 12291(a)(8) and means violence committed by: a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; a person who is cohabiting with, or has cohabited in the past with, the victim as a spouse or intimate partner; a person similar situated to a spouse of the victim; any other person against an adult or youth victim who is protected from that person’s acts under Utah law.

F. “Education program or activity” includes locations, events, or circumstances over which the PCSD District exercises substantial control over both the Respondent and the context in which the sexual harassment occurs.

G. “Jurisdiction under this policy” means that the conduct alleged meets the definition of sexual harassment as defined in section II F of this policy and occurred in the District’s education program or activity.

H. “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

I. “Retaliation” means any form of sanction or adverse treatment, including intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX or these procedures, or because the individual has made a report or complaint, testified, assisted, participated or refused to participate in any manner in an investigation. The exercise of rights protected by the First Amendment does not alone constitute retaliation.

J. "School Administrator” means all school Principals and Assistant Principals.

K. Sexual Assault: Sexual assault is defined by 20 U.S.C. § 1092(f)(6)(A)(v) and means conduct that includes, but is not limited to:
    1. Any attempted or actual sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent;
    2. Rape, including statutory rape;
    3. Fondling.

L. “Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:
    1. An employee of PCSD 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, “dating violence”, “domestic violence”, or “stalking”, all as these terms are defined in these procedures.

M. “Stalking” is defined by 34 U.S.C. § 12291(a)(30) and means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others, or to suffer substantial emotional distress.

N. “Supportive measures” means non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant and/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 without unreasonably burdening the other party. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of class schedules, provision of school escorts/supervision, mutual restrictions on contact between the parties, changes in work or study locations, leaves of absence, increased security and monitoring of certain areas of a school or other District property, and other similar measures.

O. Title IX Coordinator. The employee(s) designated and authorized by PCSD to coordinate the District's Title IX obligations. The District's Title IX Coordinator(s) are listed below. Any changes to the designated Title IX Coordinator will be immediately updated on the District's Title IX webpage, found at www.pcschools.us/titleix

1. Employee/Employee or Student/Employee Matters:
   Director of Human Resources

2. Student/Student Matters:
   Director of Student Services

   At such time as school administrators are appropriately trained, they shall be designated as Deputy Title IX Coordinators, and as such, may act in consultation with the appropriate District Title IX Coordinator to carry out the obligations of the District under this policy.

III. Policy

A. Park City School District's policy is to provide an educational environment free from sexual harassment under Title IX of the Educational Amendments of 1972.

B. It is a violation of this policy for any student or employee to sexually harass any other student or employee.

C. 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 administrator (principal or assistant principal) or the designated Title IX Coordinator.

D. 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.

E. The District may impose disciplinary action against a respondent after a fair formal grievance process as outlined in this policy. Disciplinary 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. Disciplinary decisions should be proportionate to the violation.

F. Conduct that does not constitute sexual harassment under this policy shall be addressed in any manner the district/school deems appropriate under other Board of Education approved policies including, but not limited to, 1000 - Harassment and Non-Discrimination Prohibited; 1001 - Code of Conduct; 7005 - Employee Ethics; 10001 - Bullying, Cyberbullying, Harassment, Hazing, Discrimination, and Retaliation; 10100 - Safe Schools and/or the school-level discipline plan.

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

H. Where the complaint involves allegations by or against a minor student, the student's parents/guardians will be informed and involved as active participants in the process on behalf of their student.

IV. INITIAL RESPONSE TO REPORTS OF SEXUAL HARASSMENT

A. 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 refer the matter to the applicable Title IX Coordinator who shall:

1. Confidentially discuss the availability of supportive measures with or without filing a formal complaint with the complainant.
2. Consider the complainant's wishes with respect to supportive measures.
3. Explain to the complainant the process for filing a formal complaint.
4. Evaluate any applicable safety concerns (see section IV B).
5. Determine the obligation to proceed with a formal investigation if the complainant does not wish to file a formal complaint (see section IV C).

6. Refer any reports alleging that an employee sexually harassed a student to the applicable Title IX Coordinator regardless of the complainant's wishes.

B. Safety concerns
   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.
   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 and
      d. for those students identified under Section 504 and/or the Individuals with Disabilities Education Act, conducts a manifestation determination meeting as part of or prior to the risk analysis, to the extent required by applicable law for removals of more than 10 cumulative days
   3. Human Resources may place a non-student employee respondent on administrative leave during the pendency of any Title IX investigative and grievance process.
   4. These provisions do 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.

C. Obligation to proceed with formal investigation

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.

V. **Formal Complaint**

A. A complainant (i.e., a person alleged to be the victim) may request an investigation of the allegation of sexual harassment by filing a written complaint with the District Title IX Coordinator.

B. The complainant's wishes with respect to the filing of a complaint should be respected, unless the Title IX Coordinator determines that not doing an investigation as outlined in this policy is clearly unreasonable in light of the known circumstances.

C. If the Title IX Coordinator determines the 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.

VI. **GRIEVANCE PROCESS ALLEGING STUDENT-TO-STUDENT SEXUAL HARASSMENT**

A. Notice of allegations
   1. Upon receipt of a formal complaint, the Title IX Coordinator 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.
   2. The notice of allegations shall:
      a. Disclose the sexual harassment allegations including:
         1. identities of the known parties involved in the incident;
         2. the conduct allegedly constituting sexual harassment; and
         3. 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.
a. 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.

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.

B. Informal Resolution Process

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 Title IX Coordinator determines that the particular Title IX complaint is appropriate for such a process.
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.
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.

C. Investigation of Formal Complaint

1. The Title IX Coordinator or other appropriately trained investigator designated by 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, the designated investigator 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 Title IX Coordinator or designated investigator 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 designated investigator, the parties may gather and present relevant evidence to the investigator during the investigative process.
e. When a school administrator, Title IX Coordinator, or other designated investigator has reasonable suspicion that the alleged sexual harassment involves criminal activity, he/she should immediately contact appropriate law enforcement authorities. Nothing in this policy or its procedures modifies existing obligations to report suspected child abuse to local law enforcement or the Utah State Division of Child and Family Services (DCFS) as required by applicable law.

2. Notice of evidence: Complainant and respondent shall each 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.
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.
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 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 Title IX Coordinator 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 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 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.

D. Determination regarding responsibility
1. The District Review Committee (Committee) [JA1] shall serve as the decision-making body. The decision-making body shall not be the same person as the Title IX Coordinator or the

investigator. All members of the Committee will have been previously trained on Title IX matters and these procedures.

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.
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.
4. The period to submit written questions and receive answers shall be no more than ten (10) days.
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:
        1. any disciplinary sanctions imposed; and
        2. procedures and permissible bases for the complainant and respondent to appeal the decision.

E. Extension of Time
    1. Any time limits established by this policy and these procedures may be extended for good cause by mutual consent of the parties involved.

SUPPORTIVE MEASURES AND DISCIPLINARY SANCTIONS

A. 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.

B. 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.

VIII. APPEALS

A. 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.

B. A single appeal officer or panel of appeal officers will be assigned by the Title IX Coordinator based on the nature of the underlying case and whether the allegations involve student-student, student-adult, or adult-adult conduct. The appeal officer(s) shall not be same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator. All appeal officers will have been previously trained on Title IX matters and these procedures.

C. Appeals may be heard on the following bases:
    1. Procedural irregularity that affected the outcome of the matter;
    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
    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.

D. The appeal officer(s) shall:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
2. Give both parties a reasonably equal opportunity to submit a written statement in support of, or challenging, the outcome.
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.

E. The final written decision of the appeal officer(s) shall serve as the final administrative action in the matter.

IX. RETALIATION

A. 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.

B. 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.

C. All students involved in the investigation shall be instructed that retaliation is prohibited and subject to disciplinary action.

X. CONFIDENTIALITY AND PRIVACY OF STUDENT INFORMATION

A. 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)).

B. While the District recognizes that individuals participating in any aspect of this process may wish to maintain confidentiality, the District cannot guarantee confidentiality in connection with a formal investigation because it requires the sharing of all evidence gathered during the course of an investigation, including witness names and statements. District employees participating in the decision-making process are required to keep information confidential to the greatest extent possible while still complying with the requirements of this policy. The Title IX Coordinator should discuss confidentiality standards with the complainant during the initial intake of a complaint and inform the complainant that a request for confidentiality will prevent the District from conducting a formal investigation. Confidentiality may be maintained if the complainant chooses not to pursue a formal investigation or requests only supportive measures that do not require disclosure of the person's identity to implement.

XI. RECORD KEEPING

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

1. Investigative reports and written responses of complainant and respondent;
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;
3. Any appeal and the result;
4. Any informal resolution and the result;
5. Any supportive measures taken in response to a report or formal complaint of sexual harassment;
6. Dismissal of formal complaint; and
7. All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

I. TRAINING

A. 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.

II. MONITORING RESPONSIBILITY

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

III. REFERENCES

A. 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.