

Title IX Sexual Harassment Grievance Process

The district is committed to maintaining a learning environment that is free from sex-based discrimination, including sexual harassment. It is a violation of policy for any staff member to harass students or for students to harass other students through conduct or communications of a sexual nature, or to retaliate against anyone that reports sexual harassment or participates in a harassment investigation. The district is committed to addressing all sexual harassment or allegation of sexual harassment that fall under Title IX in the manner prescribed by Title IX.

Definitions

For purposes of this regulation, these terms have the following meanings:

1. **“Advisor of choice”** means a person the complainant or respondent selects to be present during any grievance proceeding, including related meetings or proceedings.
2. **“Complainant”** means an individual who is alleged to be the target of conduct that could constitute Title IX sexual harassment.
3. **“Decision Maker”** means an individual(s) who assess the relevant evidence, including party and witness credibility, to decide if the district has met the burden of proof showing the respondent to be responsible for the alleged sexual harassment. The decision maker may not be the Title IX Coordinator or the investigator. The district’s decision-maker is the assistant superintendent.
4. **“Education Program or Activity”** means locations, events, or circumstances over which the district exercises substantial control over both the complainant and respondent and the context in which the sexual harassment occurs.
5. **“Formal complaint”** means a document alleging sexual harassment against a respondent and requesting that the district investigate the allegation of sexual harassment that is either (a) filed and signed by a complainant or the complainant’s parent or guardian with the legal authority to act on behalf of the complainant or (b) signed by the Title IX Coordinator.
6. **“Investigator”** means an individual trained to objectively evaluate the credibility of parties and witnesses, synthesize all available evidence – including both inculpatory and exculpatory evidence – and take into account the unique and complex circumstances of each situation. The investigator may be the Title IX Coordinator but cannot be the decision maker.
7. **“Respondent”** means an individual who has been reported to be the perpetrator of conduct that could constitute sex-based discrimination or sexual harassment.
8. **“Supportive Measures”** mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge, to the complainant or respondent, before or after the filing of a formal complaint or where no formal complaint has been filed.

9. **“Title IX Coordinator”** means the employee designated by a recipient to coordinate its efforts to comply with Title IX responsibilities. The Title IX Coordinator’s name/title, address, telephone number, and email are specified in Policy Exhibit AC-E-1.

The following individual has been designated to handle inquiries regarding the non-discrimination policies: Executive Director of Student Support Services, Andrew Burns, andrew.burns@pueblod60.org, Title IX Coordinator/Compliance Officer for complaints. This individual can be located at 315 West 11th Street, Pueblo, Colorado 81003, (719) 549-7100. Inquiries about Title IX can be directed to Pueblo School District No. 60’s Title IX Coordinator/Compliance Officer named herein; the Assistant Secretary for Civil Rights of the Department of Education at (800) 421-3481, OCR@ed.gov; or both. Complaint procedures have been established for students, parents, employees, and members of the public. (Policy AC, AC-R-1, AC-R-2, AC-E-1, AC-E-2, AC-E-3). Si tiene alguna pregunta sobre esta información, por favor llame a la escuela de su niño.

Title IX sexual harassment prohibited

Sexual harassment prohibited by Title IX means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the district conditions the provision of an aid, benefit, or service of the district on an individual’s participation in unwelcome sexual conduct;
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;
3. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

Response to reports

The district will promptly respond to all allegations of sexual harassment that occur in a district school’s education program or activity against a person in the United States.

All reports and written reports of sexual harassment from students, district employees, and third parties, will be forwarded immediately to the district’s Title IX Coordinator. Upon receipt, the Title IX Coordinator will contact the alleged victim of sexual harassment within 3 business days to discuss the availability of supportive measures and explain the process for filing a formal complaint.

A. Supportive measures

Supportive measures will be offered to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Supportive measures are designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party. Supportive measures may include, but are not limited to:

1. counseling;
2. extensions of deadlines or other course-related adjustments;
3. modifications of work or class schedules;
4. excused absences;
5. individualized supervision during passing periods or other unstructured times or activities;
6. mutual restrictions on contact between the parties; and
7. increased security and monitoring of certain areas of the campus, and other similar measures.

Any supportive measures provided to the complainant or respondent will remain confidential, to the extent that maintaining such confidentiality would not impair the ability of the district to provide supportive measures.

B. Emergency removal

Student respondents may be removed from the district's education program or activity on an emergency basis if the Title IX coordinator determines, after an individualized assessment, that the respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment. The district will provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.

C. Administrative leave

A non-student employee may be placed on administrative leave during the pendency of a grievance process.

Formal complaint

A formal complaint is a document filed and signed by the complainant or parent/guardian with the legal right to act on the complainant's behalf, requesting that the school investigate sexual harassment allegations. Formal complaint forms are available at the school the student attends, the Pueblo School District 60 Administration Service Center, and can be found in Policy Exhibit AC-E-3. Completed forms must be filed with the Title IX Coordinator.

If the complainant chooses not to file a formal complaint, the district may still initiate a grievance process if the Title IX Coordinator signs the formal complaint after considering the complainant's wishes and evaluating whether an investigation is clearly unreasonable in light of the specific circumstances.

The district may consolidate formal complaints where the allegations of sexual harassment arise out of the same facts or circumstances.

Absent good cause, complaints must be filed within 180 days of the event giving rise to the complaint or from the date the complainant could reasonably become aware of such occurrence.

Written notice

Within three (3) business days, if possible, of receiving a formal complaint, the district will provide written notice to the parties. The written notice will:

1. notify the parties of the district’s resolution procedures including informal resolution and the grievance process;
2. describe with sufficient detail the identities of the parties involved, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident;
3. state that the respondent is not presumed responsible at the outset and can only be found responsible after a final decision is made;
4. state that the parties may select an advisor of choice;
5. state that the parties can request to inspect and review certain evidence; and
6. include information regarding the code of conduct, if it exists, that prohibits knowingly making false statements during the grievance process.

The parties will have three (3) business days from the day the notice is sent to prepare for an initial interview.

Dismissal of formal complaints

A. Mandatory dismissal

The district will dismiss a formal complaint for Title IX purposes if the allegations do not meet the definition of sexual harassment; did not occur in the district’s education program or activity; or did not occur against a person in the United States. The district may continue to address these incidents outside the Title IX grievance process, as described in Policies JBB and AC-R-1.

B. Discretionary dismissal

The district may, in its discretion, dismiss a complaint if the complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or some of its allegations; the respondent is no longer enrolled or employed by the school; or specific circumstances prevent the school from gathering evidence sufficient to reach a determination about the allegations.

C. Appeal of dismissal

Upon dismissal of a formal complaint, the Title IX Coordinator will send written notice to the parties within three (3) business days, stating the reasons for the dismissal. Both parties have a right to appeal this decision in accordance with the procedures specified below.

A dismissal does not prohibit the complainant from pursuing other remedies under state or federal law or local board policy, nor does it prohibit the district from offering supportive measures or from addressing the allegations in any manner the district deems appropriate.

District Resolution Procedures

Following the filing of a complaint, there are two available options for resolution:

1. formal complaint grievance process, which involves an investigation and report; or,
2. informal resolution, a voluntary process.

Informal Resolution. When the Title IX Coordinator deems it appropriate, an informal resolution process may be instituted. Informal Resolution can include three different approaches:

- When the Title IX Coordinator or designee can resolve the matter informally by providing supportive measures only and complainant agrees.
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process, and complainant agrees.
- When the parties agree to resolve the matter through an alternate resolution mechanism (as described below).

When agreement is required, the party's agreement must be voluntary, non-coerced, and documented in writing. Informal resolution is not available in cases where a district employee is alleged to have sexually harassed a student.

At any time while engaging in informal resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. Generally, the informal resolution process should be completed within sixty (60) calendar days from the parties' agreement to the process, unless good cause is shown.

Alternate resolution mechanism. Alternate resolution, one form of informal resolution, references mediation, restorative practices, transformative justice, and similar methods that must only be used when designed and facilitated by well-trained individuals. Due to the specialized training required, the district may use community partners as third-party facilitators with the consent of all the parties. Alternate resolution is rarely appropriate or advisable in cases involving violent incidents, dangerous patterns, or threats.

Grievance process (investigation)

After the formal complaint is filed, if the informal resolution option is not followed, the Title IX Coordinator or the individual designated by the Title IX Coordinator who will serve as the impartial investigator, will begin investigating the allegations in the formal complaint, which will include obtaining and evaluating available evidence. The Title IX Coordinator or investigator will communicate individually with both the complainant and the respondent and may contact other witnesses.

1. The complainant and respondent will be kept apprised of the investigation's status and anticipated timeframes.
2. The district may temporarily delay or extend the grievance process for good cause. Good cause may include, but is not limited to, 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. If the District must delay or extend the grievance process, the District will provide written notice to the complainant and the respondent, explaining the reasons for doing so.
3. The district will provide written notice to a party whose participation is expected of the date, time, location, participants, and purpose of all investigative interviews or other meetings with sufficient time for the party to prepare.
4. The district will provide an equal opportunity for parties to present witnesses and other inculpatory and exculpatory evidence.
5. The district will not limit the choice or presence of either parties' advisor during any grievance proceeding, including related meetings or proceedings in any meeting or grievance proceeding.
6. The investigator will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the district obtains that party's voluntary, written consent to do so for a grievance process.
7. The district will send each party and the party's advisor, if any, the evidence directly related to the allegations in the formal complaint, including the evidence upon which the district does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. The parties will receive this information in a hard copy. The parties will have ten (10) days to submit a written response, which the investigator will consider prior to completing the investigative report.
8. The investigator will create an investigative report fairly summarizing relevant evidence.
9. Ten (10) days prior to the determination regarding responsibility, the district will send the investigative report to each party and the party's advisor, if any, in a hard copy for their review and written response.

Reaching a determination

After the district sends the investigative report to each party and the party's advisor, if any, each party will have three (3) days to submit written, relevant questions to any party or witness. The responding party has three (3) days to respond. The party receiving an answer will then have three (3) days to submit limited follow-up questions.

The decision maker may exclude questions that are improper or not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. If the decision maker excludes a question, they will explain the decision to do so to the party proposing the question.

The decision maker will determine by a preponderance of the evidence whether a party is responsible for the conduct alleged in the formal complaint. The decision maker will issue a written determination within thirty (30) days after reviewing the investigative report. The district will provide a written determination to both parties simultaneously. The written determination will include whether the Respondent is responsible, explain how and why the decision maker reached the conclusions outlined in the report, and detail any disciplinary measures and/or remedies taken in response to the conduct. Disciplinary measures may range anywhere from oral or written warning(s) up to expulsion(s). Remedies may range anywhere from offering the complainant "supportive measures" except that the remedy also may be disciplinary, punitive, or burdensome on the respondent.

The decision of the decision maker in no way prejudices either the complainant or the respondent from seeking redress through state or federal agencies, as provided in law.

Appeal

Either party will have an opportunity to appeal the decision maker's determination regarding responsibility or the district's dismissal of a formal complaint or any allegations therein within ten (10) days by making a written request to the decision maker detailing why the decision should be reconsidered. Grounds for an appeal shall be limited in accordance with applicable law to the following bases:

1. A 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; and
3. The Title IX Coordinator, investigator(s), or decision maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The district will notify the other party in writing when an appeal is filed. Each party will have ten (10) school days to submit a written statement in support of or challenging the outcome.

The decision maker for the appeal will may not be the same person as the decision maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator. The decision maker for the appeal shall have ten (10) school days to provide a written decision to the parties. Appeal decisions defer to the original decision, making changes to the determination only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. The decision maker for the appeal may: 1) affirm the written determination; 2) overturn the written determination, or 3) send the report back for additional investigation. The decision maker for the appeal's decision to affirm or overturn the report is final.

Retaliation prohibited

The district prohibits retaliation. It is a violation of this policy to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Temporary Adopted: August 25, 2020

Permanently Adopted: September 10, 2020

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LEGAL REFS.: 20 U.S.C. § 1681 et seq. (Title IX of the Education Amendments of 1972) 34 C.F.R. Part 106

CROSS REFS.: AC, Nondiscrimination/Equal Opportunity
AC-E-1, Nondiscrimination/Equal Opportunity (Sample Notice) AC-E-3, Title IX Formal Complaint
JBB, Sexual Harassment Under Title IX and Other Prohibited Misconduct of a Sexual Nature

Pueblo School District No. 60, Pueblo, Colorado

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