

## 8007.3-AR

## Sexual Harassment Under Title IX

### Employees and Students

**Generally** This Administrative Regulation sets forth the procedure the School District follows to respond to reports of conduct that may constitute sex discrimination within any education program or activity of the School District, as required by Title IX. Administrative Regulations 8007.1-AR and 8007.2-AR apply to discrimination and harassment on other bases.

The School District's Title IX Coordinator is responsible for implementing 8007.3-AR. The Title IX Coordinator will ensure their contact information is posted on the School District's website, included in the School District's annual notifications document, and published in every handbook and catalogue distributed to parents and students.

The School District does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX. The School District has adopted grievance procedures that provide for the prompt and equitable resolution of sex discrimination complaints made by students, employees, or other individuals who are participating or attempting to participate in the District's education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

#### **Sex Discrimination, including Sexual Harassment, Covered by this Policy**

The School District prohibits sex discrimination in all programs and activities that the District operates. Sex-based harassment is a form of sex discrimination, which means harassment on the basis of sex – including harassment on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity – that falls within one of the following categories:

- (1) *Quid pro quo harassment.* An employee, agent, or other person with authority to provide an aid, benefit, or service under the District's education program or activity explicitly or impliedly conditions the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
- (2) *Hostile environment harassment.* Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive, and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the District's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
  - The degree to which the conduct affected the complainant's ability to access the District's education program or activity;
  - The type, frequency, and duration of the conduct;
  - The parties' ages, roles within the District's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
  - The location of the conduct and the context in which the conduct occurred; and
  - Other sex-based harassment in the District's education program or activity; or
- (3) *Specific offenses, including:*
  - Sexual Assault
  - Dating or Domestic Violence

- Stalking

Sex discrimination, including sex-based harassment, is covered by this Policy when it occurs under the District's education program or activity in the United States. Conduct occurs under the District's education program or activity when it is subject to the District's disciplinary authority. This includes conduct that occurs on school property; through use of school property (e.g., during online learning or when using the District's network or computer systems); at school-sponsored events or activities (e.g., field trips, athletic events, extracurricular activities); and in off-campus settings, if the conduct is sufficiently serious or severe that it could contribute to a hostile environment. The District will address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the District's education program or activity.

### **Reporting Concerns about Conduct That May Be Sex Discrimination**

The School District encourages anyone who believes that they have been subjected to sex discrimination (or has knowledge of another person being subjected to sex discrimination) in connection with the District's programs or activities to promptly report their concerns to the School District. The nature of the District's response will depend upon whether the report is made to a "confidential employee" or another school employee.

- Reports to a "Confidential Employee." Reports made to a "confidential employee" will generally not be shared with the Title IX Coordinator or other school administrators. After receiving a report about conduct that may reasonably constitute sex discrimination, the confidential employee will share information with the reporting person about Title IX and its regulations, including the confidential employee's status, how to contact the Title IX Coordinator, how to make a complaint, and how to obtain additional information about possible supportive measures and options for resolution.
  - At the School District, Social Workers and Counselors are designated as "confidential employees." They may be contacted via the school building website or by calling the school's main office and requesting the school social worker or counselor.
- Reports to All Other School Employees. Reports made to all other school employees must be reported to the District's Title IX Coordinator.
- Reports to the Title IX Coordinator. When the Title IX Coordinator receives a report about conduct may reasonably constitute sex discrimination, the Title IX Coordinator will be responsible for coordinating the District's response in a fair and equitable manner, consistent with Title IX and its regulations.
  - The District's Title IX Coordinator is the Assistant Superintendent of Human Resources and may be reached at:
    - 52585 Dequindre Road, Rochester, MI 48307
    - dmurphy@rochester.k12.mi.us
    - 248.726.3118
  - Student Protection Obligations. When an employee with mandatory reporting obligations under Michigan's Child Protection Law (e.g., counselors, teachers, administrators) or other law receives information about suspected abuse of a student by a person responsible for the child's health or welfare associated with the School District (e.g., teacher, coach, or other individual affiliated with the School District), the employee must notify child protective services and/or Title IX Coordinator, even if they are a confidential employee.

## **The District's Response to Reports About Conduct That May Reasonably Constitute Sex Discrimination**

### **The Title IX Coordinator's Initial Response.**

When the Title IX Coordinator becomes aware of conduct that may reasonably constitute sex discrimination, the Title IX Coordinator will take the following actions:

- Provide the “complainant” (i.e., the person who is alleged to have been subjected to sex discrimination); the complainant’s parent, guardian or legal representative; or the person who made the report, if the complainant’s identity is unknown, with information about the Title IX process and possible options for resolution, including:
  - The availability of “supportive measures” for complainant, as described below;
  - The right to make a “complaint” that would trigger the District’s grievance procedure, which is an oral or written request that could objectively be understood as a request for the District to investigate and make a determination about alleged sex discrimination;
  - The option for informal resolution, if available and as described below;
- If a complaint is made, provide the “respondent” (i.e., the person who is alleged to have violated the District’s prohibition on sex discrimination) or the respondent’s parent, guardian or legal representative, with information about the Title IX process and possible options for resolution, including:
  - The availability of “supportive measures” for respondent, as described below.
  - The grievance procedures;
  - The option for informal resolution, if available and as described below.
- If a report made to the Title IX Coordinator does not trigger the grievance procedures (e.g., no complaint was made, the complaint allegations were withdrawn, no informal resolution process was elected), the Title IX Coordinator will determine whether to initiate a complaint that will trigger the grievance procedures. In making this determination, the Title IX Coordinator will consider multiple factors, including the complainant’s wishes; the complainant’s reasonable safety concerns; the risk of additional acts of sex discrimination if the grievance procedures are not initiated; the severity and scope of the allegations of sex discrimination; the age and relationship of the parties; the availability of evidence; and whether the District could end the alleged sex discrimination and prevent its recurrence without initiating the grievance procedures.
  - If the Title IX Coordinator initiates the complaint and grievance procedures, the Title IX Coordinator will first notify the complainant and address reasonable concerns about the safety of complainant or others, including by providing supportive measures.

### **Supportive Measures, Emergency Removal and Administrative Leave**

The Title IX Coordinator will be responsible for coordinating supportive measures, removals and placement decisions.

- *Supportive Measures.* “Supportive measures” are supports that the District may provide, as appropriate, to restore or preserve the complainant’s and respondent’s access to the School District’s education program or activity. Supportive measure may be available to the complainant even if the complainant does not make a complaint that triggers the grievance process. Supportive measures may be available to the respondent if either the grievance procedures have been triggered or informal resolution process has been offered.
  - Supportive measures may include, but are not limited to counseling, extensions of deadlines and other course-related adjustments; campus escort services; increased security or monitoring of certain areas of campus; restrictions on contact; leaves of absence; changes in class, work, or other extracurricular or any other activity, and training and education programs related to sexual harassment. Supportive measures are not disciplinary or punitive, and may not unreasonably burden either party.
  - If a party disagrees with a decision to provide, deny, modify or terminate supportive measures applicable to them, the party may submit a written request to the Title IX Coordinator challenging the decision. The Title IX Coordinator will designate an impartial employee (other than the person who made the initial decision) to evaluate the party’s challenge and decide whether to modify or reverse the decision. The impartial employee’s decision is final, except that a party may seek additional modification or termination of supportive measures applicable to them if circumstances change materially.
  - Supportive measures may be available, as appropriate, through any grievance procedure or informal resolution process; following resolution, supportive measures may terminate or remain in place.
  - Supportive measures offered to the parties are confidential and may not be disclosed, except as necessary to provide the supportive measure or restore or preserve a party’s access to the District’s education program or activity.
- *Emergency Removals.* Removal of a student-respondent from the District’s education program or activity is only permitted on an emergency basis, and may only occur after the District undertakes an individualized safety and risk analysis, and determines that an imminent and serious threat to the health and safety of a complainant or others arising from the allegations of sex discrimination justifies removal. If the District determines that an emergency removal is justified, the District must provide notice to the respondent and an opportunity to challenge the decision immediately following the removal. Any such challenge should be submitted to the Title IX Coordinator, who will be responsible for designating an impartial employee (other than the employee who made the initial decision) to evaluate and make a decision on the respondent’s challenge.
- *Students with Disabilities.* When evaluating supportive measures and emergency removals for students with disabilities covered by the Individuals with Disabilities Education Act (“IDEA”) or Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Title IX Coordinator will consult with one or more members of the student’s team or group of persons responsible for the student’s placement decision, in order to determine how to comply with IDEA and Section 504.
- *Administrative Leave.* The District may place an employee-respondent on administrative leave pending completion of the grievance procedures.

**Complaints Triggering the Grievance Procedures**

An oral or written request that could objectively be understood as a request for the District to investigate and make a determination about alleged sex discrimination is considered a "Complaint" that triggers the Title IX grievance procedures. The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that the School District investigate and make a determination about alleged discrimination under Title IX:

- A "complainant," which includes:
  - a student or employee of the School District who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
  - a person other than a student or employee of the School District who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in the School District's education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- The School District's Title IX Coordinator.

Note that a person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator has grounds to initiate a complaint based on the factors described above.

With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint:

- Any student or employee of the School District; or
- Any person other than a student or employee who was participating or attempting to participate in the School District's education program or activity at the time of the alleged sex discrimination.

The School District may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

### **The Grievance Procedures**

#### **Basic Requirements**

The School District will treat complainants and respondents equitably. The School District requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A decisionmaker may be the same person as the Title IX Coordinator or investigator.

The School District presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

The School District has established the following timeframes for the major stages of the grievance procedures:

- *Evaluation:* Within five (5) calendar days of receiving a complaint, the Title IX Coordinator will evaluate the complaint to determine whether it should be dismissed or investigated.
- *Investigation:* Within forty-five (45) calendar days of receiving a complaint, the investigation will be completed.
- *Determination:* Within sixty (60) calendar days of receiving a complaint, a determination will be issued.
- *Appeal:* Within five calendar (5) days after a determination is issued, parties may submit a written appeal. The other party will be allowed five (5) calendar days to respond. A decision will be made on the appeal within ten (10) calendar days after the appeal is received.

When there is good cause, the School District may reasonably extend these timeframes on a case-by-case basis. If such an extension is needed, the Title IX Coordinator will notify the parties of the need for an extension, the reason for delay, and the extended timeframe(s).

The School District will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses.

The School District will objectively evaluate all evidence that is relevant and not otherwise impermissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the School District to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the School District obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

### **Notice of Allegations**

Upon initiation of the School District's Title IX grievance procedures, the School District will notify the parties of the following:

- The School District Title IX grievance procedures and any informal resolution process;
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited; and
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. If the School District provides a description of the evidence, the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

If, in the course of an investigation, the School District decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided or that are included in a complaint that is consolidated, the School District will notify the parties of the additional allegations.

### **Dismissal of a Complaint**

The School District may dismiss a complaint of sex discrimination if:

- The School District is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in the School District's education program or activity and is not employed by the School District;
- The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the School District determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- The School District determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, the School District will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, the School District will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the School District will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

The School District will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then the School District will also notify the respondent that the dismissal may be appealed.

If the dismissal is appealed, the School District will:

- Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Implement appeal procedures equally for the parties;

- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;
- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, the School District will, at a minimum:

- Offer supportive measures to the complainant as appropriate;
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within the School District's education program or activity.

### **Investigation**

The School District will provide for adequate, reliable, and impartial investigation of complaints.

The burden is on the School District—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred. The School District will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.

The School District will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance. The School District will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

- The School District will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence. If the School District provides a description of the evidence, the School District will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party;
- The School District will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
- The School District will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

### **Questioning the Parties and Witnesses**



Typically, the person who investigates the complaint will be the same person who makes the determination of whether sex discrimination occurred. In the event a different person must make the determination (e.g., the investigator becomes unavailable or develops a conflict), prior to making the determination, the decisionmaker will question the parties and witnesses, either in writing or orally, in order to adequately assess a party's or witness's credibility. This questioning is only required to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.

### **Determination Whether Sex Discrimination Occurred**

Following the investigation and evaluation of all relevant and not otherwise impermissible evidence, the School District will:

- Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
- Notify the parties in writing of the determination whether sex discrimination occurred under Title IX, including the rationale for such determination and the procedures and permissible bases for the complainant and respondent to appeal;
- Not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
  - Coordinate the provision and implementation of remedies to a complainant and other people the School District identifies as having had equal access to the School District's education program or activity limited or denied by sex discrimination;
  - Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
  - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the School District's education program or activity.
- Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent; and
- Not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

### **Disciplinary Sanctions and Remedies.**

Following a determination that sex-based harassment occurred, the School District may impose disciplinary sanctions, which may include discipline ranging from a verbal warning up to and including expulsion, termination of employment, or exclusion from the District's programs and activities. The School District may also provide remedies, which may include ensuring that a complainant can move safely between classes and while at school or on campus such as by providing a campus escort or allowing a student to park in the teachers' parking lot; making changes to class schedules and extracurricular activities to ensure the complainant and respondent are separated; providing services, including medical support and counseling;

providing academic resources and support; reviewing any disciplinary actions taken against the complainant to determine whether there is a causal connection between the sex-based harassment and the misconduct; providing reimbursement for professional counseling services; making tuition adjustments; and any other remedies the District deems appropriate.

### **Appeal of Determinations**

The School District offers the following process for appeals from a determination whether sex discrimination occurred:

- Within five (5) calendar days of receiving the determination, if either party disagrees with the determination, the party may submit a written appeal to the Superintendent, copying the Title IX Coordinator. The appeal should describe the reason why the party believes the determination was incorrect. The Superintendent will allow the other party five (5) calendar days to provide a written response, and will issue a decision on the appeal within ten (10) calendar days of receiving the appeal.

**Informal Resolution** In lieu of resolving a complaint through [K-12 School]'s Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. [K-12 School] does not offer informal resolution to resolve a complaint that includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or when such a process would conflict with Federal, State, or local law.

**Cooperation with Law Enforcement Agencies** In certain instances, an allegation of sex based harassment may be investigated as a criminal matter. To the extent permitted by law, the School District will comply with law enforcement requests for cooperation