



The Foundation for Hispanic Education Title IX Policy for Sexual Harassment

The Foundation for Hispanic Education (“TFHE”) is committed to maintaining a safe and respectful school environment that is free from discrimination and harassment. Title IX of the Education Amendment Act of 1972 (“Title IX”) prohibits discrimination on the basis of sex, including sexual harassment, in TFHE’s education programs and activities.

This Title IX Policy for Sexual Harassment (“Policy”) details TFHE’s commitment to maintain a learning environment that is free from sexual harassment and provides a grievance process for allegations of sexual harassment as defined under Title IX. Any individual can report sexual harassment at TFHE to TFHE staff (e.g., Chief Executive Officer, principals, teachers, etc.), and TFHE will take appropriate action in accordance with this Policy.

Sexual harassment is a form of gender discrimination in that it constitutes differential treatment on the basis of gender, gender identity or expression, or sexual orientation, and, for that reason, is a violation of state and federal laws and a violation of this Policy. TFHE considers sexual harassment to be a major offense which can result in discipline of students and termination of employees.

Definition of Sexual Harassment Under California Law

California Education Code section 212.5 defines sexual harassment as any unwelcome sexual advances, requests for sexual advances, requests for sexual favors, or other verbal, visual, or physical conduct of a sexual nature made by someone from or in the work or educational setting, under the following conditions:

- Submission to the conduct is explicitly or implicitly made a term or a condition of an individual’s employment, academic status, or progress.
- Submission to, or rejection of the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
- The conduct has the purpose or effect of having a negative impact upon the individual’s work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.
- Submission to, or rejection of, the conduct by the individual is used as the basis for any decisions affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

Sexual harassment may include, but is not limited to:

- Unwelcome verbal conduct such as suggestive, derogatory comments, sexual innuendoes, slurs, or unwanted sexual advances, invitations, or comments; pestering for dates; making threats; or spreading rumors about or rating others as to sexual activity or performance.

- Unwelcome visual conduct such as displays of sexually suggestive objects, pictures, posters, written material, cartoons, or drawings; graffiti of a sexual nature; or use of obscene gestures.
- Unwelcome physical conduct such as unwanted touching, pinching, kissing, patting, hugging, blocking of normal movement, assault; or interference with work or study directed at an individual because of the individual's sex, sexual orientation, or gender.
- Threats and demands or pressure to submit to sexual requests in order to keep a job or academic standing or to avoid other loss, and offers of benefits in return for sexual favors.

Under Education Code section 230, harassment and other discrimination on the basis of sex include, but are not limited to, the following: exclusion of a person or persons from participation in, denial of the benefits of, or subjection to harassment or other discrimination in, any academic, extracurricular, research, occupational training, or other program or activity; and exclusion from participation in, or denial of equivalent opportunity in, athletic programs. The full definition of discrimination and harassment based on sex from Education Code section 230 can be found here: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=230.

The definition of sexual harassment under California law and the definition of Sexual Harassment under Title IX overlap in some areas. Complaints alleging unlawful discrimination, harassment, intimidation, or bullying based on gender, sex, gender identity or expression, or sexual orientation are eligible to be investigated pursuant to TFHE's Uniform Complaint Procedures. However, if any complaints alleging sexual harassment constitute Sexual Harassment as defined under Title IX (see below), the complaints shall be investigated under the Title IX Grievance Procedures for Sexual Harassment. TFHE prohibits retaliatory behavior against anyone who files a sexual harassment complaint or any participant in the complaint investigation process.

Sex Equity in Education Act Statement

Students have all the rights set forth in Education Code section 221.8 (as applicable to TFHE's programs). This includes the right to fair and equitable treatment, the right to a school environment without discrimination on the basis of sex, and right to be provided with an equitable opportunity to participate in all academic extracurricular activities. The description of all rights set forth in Education Code section 221.8 can be found here: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=221.8.

For more information about Gender Equity/Title IX, please visit the following CDE website: <https://www.cde.ca.gov/re/di/eo/genequitytitleix.asp>.

Title IX Grievance Procedures for Sexual Harassment

I. Scope and Jurisdiction

This Policy's Title IX grievance procedures apply only to conduct that falls within the definition of "Sexual Harassment" under Title IX. TFHE employees or students may submit formal complaints of Sexual Harassment for investigation under this Policy. Sexual Harassment under Title IX means conduct on the basis of sex that falls within one or more of the following categories:

1. An TFHE employee conditioning the provision of a school aid, benefit, or service on an individual's participation in unwelcomed sexual conduct.
2. Unwelcomed conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to TFHE's education program or activity.
3. Sexual assault, dating violence, domestic violence, or stalking (as those terms are defined in 34 CFR section 106.30(a)(3)).

II. Title IX Personnel

TFHE has designated the following individual as its Title IX Coordinator to coordinate the investigation and resolution of Sexual Harassment formal complaints as outlined in this Policy:

Erika Carvajal
Director of Human Resources
14271 Story Road, San Jose, CA 95127
Phone: (408) 585-5022 Ext. 1067
Email Address: ecarvajal@tfhe.org

The Title IX Coordinator may designate other individual(s) to fulfill all or part of their duties. In addition to the Title IX Coordinator, the following Title IX Personnel are involved in the grievance process to address formal complaints:

- **Investigator:** The individual responsible for gathering all evidence related to the formal complaint. This individual will create an "Investigation Report" which will summarize the relevant evidence.
- **Decision-Maker:** The individual responsible for evaluating evidence in order to make a determination regarding the formal complaint. The Decision-Maker submits a written determination of findings to the parties. The Decision-Maker cannot be a Title IX Coordinator, the Investigator, or any individual involved in the investigation of the formal complaint.
- **Title IX Appeals Officer:** If applicable, this individual is responsible for evaluating an appeal of the final determination. The Title IX Appeals Officer cannot be a Title IX

Coordinator, Investigator, Decision-Maker, or any individual involved in the investigation of the formal complaint.

All Title IX Personnel (i.e., Title IX Coordinator, Investigator(s), Decision-Maker(s), Appeals Officer(s), and any person who facilitates an informal resolution process) will receive training in accordance with Title IX requirements. The Title IX Coordinators must ensure individuals responsible for investigating a formal complaint are neutral.

III. Reporting Allegations of Sexual Harassment

Any individual (e.g., a student or employee who is alleged to be a victim of Sexual Harassment or a parent/guardian of a student who is alleged to be a victim of Sexual Harassment), may report Sexual Harassment directly to one of the TFHE Title IX Coordinator, or to any other available TFHE employee who shall immediately inform a Title IX Coordinator. Reports of Sexual Harassment can be made in-person, by mail, by telephone, by electronic mail, or by any other means that result in a Title IX Coordinator receiving the person's verbal or written report.

IV. TFHE's Initial Response to a Report of Sexual Harassment

Upon receipt of any report of Sexual Harassment, the Title IX Coordinator or designee will take the following steps. These steps are offered regardless of whether the complainant submits a formal written complaint:

1. Contact Complainant and Determine Need for Supportive Measures: The Title IX Coordinator will contact the complainant and respondent¹ to discuss the availability of supportive measures to stop the harassment, protect students, and ensure access to the educational program. If a formal complaint was not filed, the Title IX Coordinator shall explain to complainant the right to file a formal complaint and the process for filing a formal complaint. A formal complaint is one that contains the complainant's physical or digital signature, and it may be filed at any time with the Title IX Coordinator in person, by mail, or by email. A complainant may use the attached Title IX form to submit a formal complaint to the Title IX Coordinator.
 - a. Supportive measures are non-disciplinary and nonpunitive and shall be available at any point during the Title IX investigation. Supportive measures may include, but are not limited to: wellness check-ins, counseling services, extension of deadlines or course-related adjustments, modifications of work or class schedules, changes in work locations, or leaves of absences. The Title IX Coordinator is responsible for implementing the supportive measures.
2. Determine Need for Emergency Removal: The Title IX Coordinator will review the facts to determine whether the respondent (either student or staff) may need to be removed

¹ The "complainant" is the individual who is alleged to be the victim of conduct that could constitute Sexual Harassment. The "respondent" refers to the individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment. If a parent or guardian has a legal right to act on behalf of a complainant or respondent, this right applies throughout all aspects of the Title IX matter, including the grievance process.

from the educational program or activity to prevent any further sexual harassment and/or maintain the safety of students and staff.

- a. TFHE may determine that removal from the educational program or activity is justified due to an immediate threat to the physical health or safety of any student or other individual arising from the allegations. TFHE will conduct an individualized safety and risk analysis before the removal. TFHE shall provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- b. If the respondent is a student, TFHE is subject to applicable laws and school policies regarding involuntary removals, suspensions, and expulsions.
- c. If the respondent is an employee, the employee may be placed on administrative leave during the formal complaint investigation.

V. Initial Review of Formal Complaint:

If a formal complaint is filed, the Title IX Coordinator will review the complaint to determine whether it raises allegations that fall within the definition of Sexual Harassment under Title IX as described above. TFHE may consolidate multiple formal complaints where the allegations of Sexual Harassment arise out of the same facts or circumstances.

If it does, the Title IX Coordinator will follow this Policy's grievance procedures for formal complaints. If it does not, the Title IX Coordinator will determine whether the complaint should be dismissed (as explained below) and/or investigated pursuant to another applicable TFHE policy (e.g., Uniform Complaint Procedures).

At any time after a formal complaint has been filed, but before reaching a determination regarding the allegation, TFHE may offer an informal resolution process (such as a restorative justice or mediation) to the complainant and respondent. However, the informal resolution process is not available where the complainant alleges that an employee sexually harassed a student. Participation in informal resolution is voluntary.

VI. Mandatory or Permissive Dismissal of Formal Complaint:

Under certain circumstances, a complaint must or should be dismissed by the Title IX Coordinator. The Title IX Coordinator will endeavor to make this determination no more than **ten (10) calendar days** from the date they receive the formal complaint.

1. **Mandatory Dismissal:** The Title IX Coordinator must dismiss the formal complaint if they determine any of the following:
 - a. The alleged conduct would not constitute Sexual Harassment as defined under Title IX even if proved;
 - b. The alleged conduct did not occur in TFHE's education program or activity; or

- c. The alleged conduct did not occur against an individual in the United States.
2. Permissive Dismissal: The Title IX Coordinator may dismiss a formal complaint if they determine any of the following:
 - a. The complainant has notified TFHE, in writing, that they would like to withdraw the complaint or any allegations in the complaint;
 - b. The respondent is no longer enrolled in, or employed by, TFHE; or
 - c. Specific circumstances prevent TFHE from gathering evidence to reach a determination with regard to the complaint.

Written Notice of Dismissal: If the Title IX Coordinator dismisses the complaint, they must send written notice of the dismissal simultaneously to both parties (complainant and respondent) as follows:

- The written notice should state the reason(s) for the dismissal and inform the parties of their right to appeal in accordance with the procedures described in the “Appeals” section below.
- If the Title IX Coordinator determines another TFHE grievance procedure (e.g., Uniform Complaint Procedures) is the appropriate grievance procedure for the complainant’s allegation(s), the written notice shall inform the parties (complainant and respondent) of TFHE’s intent to investigate the complaint through that grievance procedure.

VII. Title IX Grievance Procedures

If the Title IX Coordinator does not dismiss the formal complaint, TFHE will initiate the following Title IX Grievance Procedures and issue a Written Decision. TFHE will endeavor to complete its investigation and issue a Written Decision within **sixty (60) calendar days of receipt of the formal complaint**.

1. Send Written Notice of Formal Complaint

The Title IX Coordinator must provide the parties (complainant and respondent) with a Notice of Formal Complaint. The Title IX Coordinator will endeavor to provide this Notice within **ten (10) calendar days of receipt of the formal complaint**. The notice shall include: (1) a copy of this Policy; (2) a description of the allegations potentially constituting Sexual Harassment with sufficient details known at the time; (3) a statement that the respondent is presumed not responsible for conduct and that a determination regarding responsibility is made at the conclusion of the grievance process; (4) a statement informing the parties of the opportunity to have an advisor of their choice throughout the grievance process and the ability to inspect and review evidence; and (5) a statement informing the parties that they must not knowingly make false statements or submit false information.

2. Investigator Conducts Investigation

The Investigator will gather and review evidence related to the allegations. This can include, but is not limited to, interviewing parties or witnesses, as well as reviewing relevant evidence. The Investigator will not require, request, or rely upon any information protected under a legally recognized privilege, unless the person holding such privilege has waived it.

Written notice of all investigative interviews or other meetings must be provided to any individual whose participation is invited or expected to be provided with sufficient time for the individual to prepare to participate. Notice must include the date, time, location, participants, and purpose of the meeting. Attendees of such meetings will have the right to be accompanied by an advisor of their choice.

3. Investigator Provides Parties Equal Opportunity to Review Gathered Evidence

The Investigator will provide both the complainant and respondent with an equal opportunity to review the evidence that is directly related to the allegations raised in the formal complaint. The parties will have a period of at least **ten (10) calendar days** before the Investigative Report is provided to the parties to review the evidence, ask the Investigator additional questions, and provide or suggest additional evidence to be considered by the Investigator.

4. Investigator Prepares and Shares Investigative Report

The Investigator will prepare an Investigative Report summarizing the relevant evidence. The Investigative Report is not TFHE's final Written Decision. The Investigator will send the Investigative Report to the parties and their advisors, if any, for their review and written response at least **ten (10) calendar days** before issuance of the Written Decision. TFHE will inform the parties in writing that they may submit to the Decision-Maker written, relevant questions that the parties want asked of any party or witness. The Decision-Maker is responsible for providing the responses (if any) to these questions to both parties.

5. Decision-Maker Issues Written Decision

The Decision-Maker will endeavor to issue the Written Decision within **sixty (60) calendar days from the receipt of the formal complaint**. The Decision-Maker will issue a Written Decision to both parties simultaneously. The Decision-Maker uses the "preponderance of evidence" standard (i.e., it is more likely than not that the respondent committed the alleged conduct). The Written Decision will include all of the following:

- a. Identification of the allegations potentially constituting Sexual Harassment.
- b. A description of the procedural steps taken by TFHE during the investigation process (e.g., notifications to the parties, interviews with the parties and witnesses, site visits, or methods used to gather other evidence).
- c. Findings of fact supporting the determination.
- d. Conclusions regarding the application of TFHE's policies to the facts.

- e. A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, any disciplinary sanctions TFHE imposes on the respondent, and whether remedies designed to restore or preserve equal access to TFHE's educational program will be provided by TFHE to the complainant.
- f. TFHE's procedures and permissible bases for either party to appeal the decision.

6. Remedies

If TFHE determines that the respondent engaged in Sexual Harassment, TFHE will provide remedies to the complainant, as appropriate. This may include supportive measures. Remedies may also include: transfer from a class; parent/student conference(s); positive behavior support; warnings; detention; and/or formal discipline, such as suspension and expulsion. When an employee is found to have committed Sexual Harassment, TFHE will take appropriate disciplinary action, up to and including termination, in accordance with TFHE's policies and as permitted by law.

VIII. **Appeals**

Either party may appeal TFHE's Written Decision, or its dismissal of a formal complaint or any allegation in the complaint, within **five (5) calendar days of the decision**. An appeal may be made on any of the following grounds:

1. A procedural irregularity affected the outcome.
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.
3. The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against complainant or respondent that affected the outcome of the matter.

Upon receipt of an appeal, TFHE will provide a written notification to the other party about the appeal that gives both parties a reasonable, equal opportunity to submit a written statement in support of/challenging the appeal.

The Title IX Appeals Officer (not Decision-Maker, Title IX Coordinator, or Investigator) shall issue a written decision of an appeal, including the rationale for the result, to both parties simultaneously. The Title IX Appeals Officer will endeavor to issue their decision within **thirty (30) calendar days from the receipt of the appeal**.

IX. **Record Keeping**

TFHE will maintain for a period of seven (7) years records pertaining to Title IX Sexual Harassment allegations in accordance with 34 CFR section 106.45(b)(10), as well as all material used to train Title IX Personnel.

Title IX Sexual Harassment Complaint Form

Instructions: This form can be completed by any individual who has knowledge of a sexual harassment conduct occurring within an education program or activity of The Foundation for Hispanic Education ("TFHE"). Please complete the information below. Should you need additional space or would like to provide documentation to support the allegations in the complaint, you can attach those to this complaint form. If you have any questions, please contact TFHE's Title IX Coordinator listed below.

Contact Information and Complainant's (Victim) Information

Full Name of Person Filing the Complaint: _____

Address: _____

Phone: _____ Email: _____

School Name: _____

Complainant's (Victim) Full Name (if different from above): _____

Respondent's (Accused) Information

Respondent's Full Name: _____

Is the accused an TFHE student? ☐ No ☐ Yes

If yes, what is the student's grade and relation to complainant: _____

Is the accused an TFHE staff member? ☐ No ☐ Yes

If yes, what is the staff member's relation to the complainant (e.g., teacher)? _____

If no, what is the accused's affiliation to TFHE? _____

Details of Complaint

Date of the Alleged Incident(s): _____ Location of Alleged Incident(s): _____

Please describe the facts underlying your complaint. Provide details such as the names of those involved, the dates of the incident(s), whether witnesses were present and the names of any witnesses, etc. Please provide any details which you feel might be helpful to a complaint investigator.

Did the harassment occur at TFHE or during an TFHE activity? If so, please describe:

Did this incident interfere with your ability to access or participate in TFHE programs or activities? If so, please describe:

List the individuals involved in the relevant incident(s):

List any witnesses to the incident(s):

Acknowledgements

By submitting this form to the TFHE Title IX Coordinator, I wish to initiate TFHE's formal Title IX Grievance Procedures.

Signature of Complainant

Date

Once you have completed this form, please submit it to the Title IX Coordinator:

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