

8007.3-AR

Sexual Harassment Under Title IX

Employees and Students

Generally This Administrative Regulation sets forth the procedure the School District follows to investigate and resolve complaints of sexual harassment made against School District employees or students 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 his/her 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.

Definitions for 8007.3-AR

"Complainant" means an individual who is reported to have experienced conduct that could constitute sexual harassment under Title IX.

"Respondent" means the person who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX.

"Investigator" means a person the Title IX Coordinator has appointed to investigate allegations of sexual harassment against Respondent.

"Sexual Harassment" means conduct on the basis of sex that falls within one or more of the following categories:

- An employee of the School District conditioning an aid, benefit, or service on Complainant's participation in unwelcome sexual conduct;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies Complainant equal access to the School District's education program or activity; or,
- "Sexual assault" as defined in [20 USC 1092\(f\)\(6\)\(A\)\(v\)](#), "dating violence" as defined in [34 USC 12291\(a\)\(10\)](#), "domestic violence" as defined in [34 USC 12291\(a\)\(8\)](#), or "stalking" as defined in [34 USC 12291\(a\)\(30\)](#).

Duty to Respond to Known or Reported Sexual Harassment

"Supportive Measures" means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to Complainant or Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the School District's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the School District's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. 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 School District to provide the supportive measures. The School District has a duty to respond to allegations of sexual harassment any time a School District employee has notice of sexual harassment or receives a report of alleged sexual harassment. All School District employees are required to promptly report all incidents and/or allegations of sexual harassment to the Title IX Coordinator.

Absent extenuating circumstances, within two (2) days, the Title IX Coordinator will contact Complainant (and/or Complainant's parent/guardian(s), as appropriate) to discuss how to resolve their concerns, including the option and process for filing a formal complaint. The Title IX Coordinator will also discuss the availability of supportive measures, with or without the filing of a formal complaint. The Title IX Coordinator will consider Complainant's wishes with respect to supportive measures as well as whether supportive measures are reasonably available and appropriate to restore or preserve Complainant's access to the School District's programs or activities without unreasonably burdening Respondent. When the Title IX Coordinator notifies Respondent (and/or Respondent's parent/guardian) of Complainant's allegations, the Title IX Coordinator will also discuss the availability of supportive measures with Respondent and consider Respondent's wishes with respect to supportive measures as well as whether supportive measures are reasonably available and appropriate to restore or preserve Respondent's access to the School District's programs or activities without unreasonably burdening Complainant. The Title IX Coordinator will be responsible for offering and coordinating effective implementation of supportive measures.

Action to remove a student-Respondent from the School District's program or activity prior to a final decision is not a supportive measure. However, the Title IX Coordinator may temporarily remove a student-Respondent from the School District on an emergency basis if, after an individualized risk assessment takes place, the Title IX Coordinator determines that the student-Respondent poses an immediate threat to the physical health or safety of Complainant or any other person. In such cases, upon removal, the Title IX Coordinator will provide the student-Respondent with notice and an opportunity to challenge the temporary removal at the earliest possible date. Any removal of a student-Respondent with a disability shall also comply with federal law, including the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act.

When the Respondent is an employee, the Title IX Coordinator may, after consulting with the School District's chief human resources officer, place the Respondent-employee on temporary administrative leave. A temporary removal or administrative leave will end when a final decision is reached.

If, as an initial matter, it is clear that the reported sexual harassment is not covered by Title IX because (1) the allegations, even if true, do not rise to the level of sexual harassment; (2) the alleged sexual harassment occurred outside of the School District's program or activities; or (3) the alleged sexual harassment occurred outside of the United States, the Title IX Coordinator will explain how that could impact disposition of a formal complaint as well as how other School District policies, administrative guidelines, or codes of conduct may apply.

Formal Complaint A Complainant (or parent/guardian of a student-Complainant) may file a formal complaint. The Title IX Coordinator may file a formal complaint even if Complainant declines to do so. The formal complaint will include: the names of Complainant and Respondent, or identifying information if Respondent's name is unknown; as complete a description of the alleged sexual harassment as is available, including dates, times, and places; actual and potential witnesses; actual and potential relevant documents, data, and other items; and the signature of the person making the complaint or the Title IX Coordinator.

Response to Formal Complaint and Grievance Procedure.

Generally. The Title IX Coordinator will ensure that, at every step of the Grievance Procedure, the parties are treated equitably; all information and evidence is evaluated objectively; and, there are no conflicts of interest affecting the Title IX Coordinator or any informal resolution facilitator, Investigator, Decision-Maker, or any individual resolving an appeal.

Notice. Upon receiving or filing a formal complaint, the Title IX Coordinator will issue a notice to Complainant and Respondent. The notice will include:

- Information about the School District's grievance procedure, including any informal resolution process;
- Notice of the allegations potentially constituting sexual harassment, including sufficient details and time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known; the conduct allegedly constituting sexual harassment; and

the date and location of the alleged incident, if known.

- 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.
- Notification that the parties may have an advisor of their choice, who may (but is not required to be) an attorney and who may inspect and review evidence.
- Notification of any provision in the School District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, during the investigation, the School District decides to investigate allegations that were not included in the original notice, the Title IX Coordinator will notify Complainant and Respondent of the additional allegations.

Dismissal. The Title IX Coordinator must dismiss a formal complaint if the allegations: do not establish sexual harassment under Title IX, even if they are true; did not occur in connection with the School District's programs and services; or, did not occur in the United States. The Title IX Coordinator may dismiss a formal complaint, in whole or in part, if: Complainant withdraws some or all of the allegations; Respondent's employment or enrollment in the School District ends; or specific circumstances prevent the School District from gathering sufficient relevant evidence to reach a decision on the formal complaint. The School District's Title IX Coordinator will notify Complainant and Respondent, in writing, if a formal complaint is dismissed, including an explanation for the dismissal. The Complainant or Respondent may appeal the dismissal.

Informal Resolution At any point between the filing of the formal complaint and the decision-maker reaching a determination of responsibility, the parties may voluntarily agree to participate in an informal resolution process. The informal resolution process must be completely voluntary, and may not be initiated until:

- the parties have been provided notice of their rights by delivery of the applicable anti-harassment policy and 8007.3-AR;
- the parties have been informed of the consequences of informal resolution, including that it may preclude the resumption of a formal complaint investigation arising from the same allegations and that records may be maintained and shared; and
- the parties have voluntarily consented to informal resolution, in writing.

Any informal resolution process will be completed within fifteen (15) days of the parties' agreement to participate, absent good cause or written agreement of the parties and the Title IX Coordinator to extend the timeline.

Investigation The Title IX Coordinator or designee (the Investigator) will investigate a formal complaint. The burden of undertaking and completing the investigation rests on the School District. The Investigator will presume Respondent is not responsible unless a final decision against Respondent is reached. The Investigator will not require, seek, or rely on privileged information without consent of the privilege-holder.

Within five (5) days after the Investigator provides Respondent with notice of the formal complaint, Respondent may file a written response. The Investigator will provide a copy of any written response to the Complainant. Regardless of whether Respondent files a written response, the Investigator will undertake an investigation that will include, but not be limited to:

- interviewing Complainant and Respondent, unless they refuse to be interviewed or fail to timely respond to the Investigator's interview request;
- interviewing relevant witnesses and other potentially relevant witnesses who Complainant or Respondent request, unless the witness refuses to be interviewed or fails to timely respond to the Investigator's interview request;
- obtaining, to the extent they are available, all relevant documents, data, and other items identified

by Claimant, Respondent, and witnesses;

- preparing an investigative report that fairly summarizes the interviews and relevant evidence; and,
- providing the investigative report to the parties simultaneously.

Neither Complainant nor Respondent are required to participate in the investigation process, including interviews. The Investigator will not draw any negative inferences based solely on a Complainant's or Respondent's lack of participation, but participation is encouraged so that the Investigator has the benefit of hearing the perspective of all parties. The School District will not interfere with the parties' ability to discuss the allegations or gather and present evidence.

Prior to finalizing the investigative report, the Title IX Coordinator or Investigator will send each party and their advisor(s) a copy of all of the evidence directly related to the allegations of sexual harassment in the formal complaint. The parties will have up to ten (10) days to review the evidence and submit a written response, which the Investigator will consider prior to completing the investigation report. Absent good cause, the investigation report will be completed with sixty (60) days. The Title IX Coordinator will, upon completing or receiving the Investigator's Report, simultaneously send a copy to Complainant, Respondent, and their advisors, if any, and allow for a written response.

The Title IX Coordinator will also send a copy of the Investigation Report to the Decision-maker, and notify the parties of their right, within ten (10) days, to: submit relevant written questions that the party wants the Decisionmaker to ask a party or witness; receive answers to any such written relevant questions; and allow for additional, limited follow-up questions from each party. Any questions or evidence about Complainant's sexual predisposition or prior sexual behavior are not relevant, unless they are offered to prove that someone other than Respondent committed the conduct alleged by Complainant; or they concern specific incidents of Complainant's prior sexual behavior with respect to Respondent and are offered to prove consent. If the Decision-maker declines to ask a party or witness a question, the Decision-maker will provide a written explanation to the party who posed the question.

The Title IX Coordinator may permit a delay or extension of the investigative timelines for good cause. If this occurs, the Title IX Coordinator will notify Complainant and Respondent of the delay or extension and reason for it. Separately, if Respondent is a School District employee, the Title IX Coordinator will review any applicable collective bargaining agreement and grant any required adjournment of the investigative timelines.

Decision. The Title IX Coordinator will appoint a Decision-Maker, who is not the Title IX Coordinator or Investigator. The Decision-Maker will objectively review the investigation report and relevant evidence gathered through the investigation process. Credibility determinations, if any, will not be based on an individual's status as Complainant, Respondent, or witness. The Decision-Maker will not hold Respondent responsible unless a preponderance of the evidence establishes Respondent sexually harassed Complainant. Absent extenuating circumstances, the Decision-Maker will issue a decision within ten (10) days of receiving the investigation report and evidence and will provide the decision to Complainant and Respondent simultaneously. The decision will include: Complainant's allegations; procedural steps taken with respect to the allegations; findings of fact; the application of the applicable anti-harassment policy, this 8007.3-AR, and the School District's Student Code of Conduct to the facts; and a statement of all rationale for the result as to each allegation, including determinations of responsibility, disciplinary sanctions, whether Complainant will be provided remedies to restore or preserve equal access to the School District's education programs and activities, and the procedure and bases for appeal. Upon a finding of responsibility, sanctions for Respondent-students may range from administrative intervention to permanent expulsion. Sanctions for Respondent-employees may range from counseling to discharge. Sanctions for Respondent-Board members may range from censure to a petition to the Governor for removal from the Board of Education. Remedies may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

Appeal. Within five (5) days of the Decision-Maker sending the decision to the parties and any advisors,

Complainant or Respondent may appeal the Decision-Maker's decision by filing an appeal with the Superintendent on one or more of the following bases:

- Procedural irregularity that affected the outcome;
- New evidence being discovered that was not reasonably available at the time of the determination or dismissal; or
- A conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent by the Investigator, Title IX Coordinator or Decision-Maker that affected the outcome of the grievance process.

The Superintendent will provide notice to the opposite party if an appeal is filed, including a copy of the appeal, and an opportunity to respond. The appeal must include all of the reasons the appealing party disagrees with the decision as it relates to the permissible bases for appeal. The Superintendent will review the appeal, and after considering the appeal, the decision, and any other relevant evidence or information relevant to the appeal, may either: (1) affirm the decision, in whole or in part, or (2) reverse the decision, in whole or in part. The Superintendent may also remand the decision, in whole or in part, for additional investigation by the original or a different Investigator and/or further consideration by the original or a different Decision-Maker. Absent extenuating circumstances, the Superintendent will issue the appeal decision within ten (10) days of receiving the appeal or response, if any, and provide his/her decision to the parties simultaneously. The grievance process is complete and a final decision is reached when no timely appeal is taken or after the appeal process is completed.

Training The Title IX Coordinator will ensure that the Title IX Coordinator, all informal resolution facilitators, Investigators, and Decision-Makers (including those who resolve appeals) receive the following training: the definition of sexual harassment; the scope of the School District's programs and activities; how to determine whether information and evidence is relevant, including the application of Title IX's "rape-shield" provision; the grievance process, including how to conduct an investigation, how to prepare a fair summary of evidence gathered during an investigation, how to prepare a decision, and how to resolve an appeal; and, how to serve impartially, including avoiding prejudgment of facts, conflicts of interest, and bias. The Title IX Coordinator is responsible for ensuring the School District's training and training materials are posted on the School District's website.

Confidentiality and Retaliation Except as required or permitted by law, the School District will keep confidential the identity of any individual who makes a report or complaint of sexual harassment, any individual who is identified as a potential or actual Complainant or Respondent, and any witness. Neither the School District nor any other person may retaliate against an individual who has made a report or formal complaint or participated or refused to participate in an investigation or other proceeding under this Administrative Regulation.

Filing with OCR or EEOC An employee or student alleging harassment may, at any time, file a complaint with the United States Department of Education Office for Civil Rights at:

Office for Civil Rights
U.S. Department of Education
Cesar E. Chavez Memorial Building
1244 Speer Boulevard, Suite 310
Denver, CO 80204-3582
Telephone: 303-844-5695
FAX: 303-844-4303; TDD: 800-877-8339
Email: OCR.Denver@ed.gov
Web: <http://www.ed.gov/ocr>

An employee alleging sexual harassment against another employee or supervisor may also, or instead, file a complaint with:

United States Department of Labor
Equal Employment Opportunity Commission

Detroit Field Office
477 Michigan Avenue, Room 865
Detroit, Michigan 48226

or

State of Michigan
Department of Civil Rights
Cadillac Place, Suite 3-600
3054 West Grand Boulevard
Detroit, Michigan 48202

Cooperation with Law Enforcement Agencies In certain instances, an allegation of sexual 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.

Record Retention The School District will retain, for at least seven (7) years: all training materials; all reports received by the Title IX Coordinator and actions taken in response to such reports, including why any decision not to provide supportive services was not clearly unreasonable; and, all formal complaints, documents, and other items (including data) arising from formal complaints or investigations conducted pursuant to this Administrative Regulation, including investigative reports and related documents, decisions, appeals and appeal decisions, and informal resolutions.