

Students

Title IX Sexual Harassment Complaint Procedures

The complaint procedures described in this administrative regulation shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that a district student, while in an education program or activity, was subjected to sexual harassment as specified in Administrative Regulation 5145.7 – Sexual Harassment.

All other sexual harassment complaints or allegations brought by or on behalf of students shall be investigated and resolved in accordance with BP/AR 1312.3 – Uniform Complaint Procedures. The determination of whether the allegations meet the definition of sexual harassment under Title IX shall be made by the Title IX Coordinator.

Basic Requirements

When implementing Title IX grievance procedures, the District shall: (34 CFR 106.45)

1. Treat complainants and respondents equitably
2. Ensure that the Title IX Coordinator or designee, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent
3. Presume that the respondent is not responsible for the alleged sexual harassment until a determination is made at the conclusion of the grievance procedures
4. Establish reasonably prompt timeframes for the major stages of the grievance procedures, such as evaluation of whether to dismiss or investigate a complaint, investigation, decision, and appeals if any
5. Establish a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay

Additionally, the District shall not disclose personally identifiable information obtained while implementing Title IX complaint procedures unless the District has obtained prior written consent from a person with the legal right to consent to the disclosure; the information is disclosed to a parent/guardian or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue; to take action to address conduct that reasonably may constitute sexual harassment under Title IX, including sexual harassment, in the District's education program or activity; as required by federal law, regulations, or as a condition to a federal award; as required by state or local law; or to the extent such disclosures are not otherwise in conflict with Title IX. (34 CFR 106.44)

Filing a Complaint

Upon receiving information from an allegation of sexual harassment, the Title IX Coordinator or designee shall notify the individual(s) specified in law of the Title IX grievance procedures, and of the informal resolution process, if available and appropriate.

A formal complaint, with the complainant's physical or digital signature, may be filed with the Title IX Coordinator in person, by mail, by email, or by any other method authorized by the district. (34 CFR 106.30)

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Complaints of sexual harassment may only be brought by a student, or former student, who was participating or attempting to participate in the District's education program or activity at the time of the alleged sexual harassment, a parent/guardian or other authorized legal representative with the legal right to act on behalf of the student, or the Title IX Coordinator or designee. (34 CFR 106.45)

If the complainant chooses not to bring a formal complaint, or withdraws any or all of the allegations in a complaint, and in the absence or termination of an information resolution process, the Title IX Coordinator or designee shall consider whether to initiate a complaint. The Title IX Coordinator shall file a formal complaint in situations when a safety threat exists. In addition, the Title IX Coordinator may file a formal complaint in other situations as permitted under the Title IX regulations, including as part of the district's obligation to not be deliberately indifferent to known allegations of sexual harassment. (34 CFR 106.44)

If the Title IX Coordinator initiates a complaint, the Title IX Coordinator shall provide the complainant notice of the complaint, as well as other notices as required by the Title IX regulations at specific points in the complaint process. The Title IX Coordinator shall also address reasonable concerns about the complainant's safety or the safety of others, including providing supportive measures as described in "Supportive Measures" below, and taking other appropriate prompt and effective steps to ensure that sexual harassment does not continue or recur within the district. (34 CFR 106.44)

The Title IX Coordinator or designee, investigator, decisionmaker, other person who is responsible for implementing the district's grievance procedures, or a facilitator of an informal resolution process shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Such persons shall receive training in accordance with 34 CFR 106.45.

The Title IX Coordinator shall monitor the District for barriers to reporting information about conduct that reasonably may constitute sexual harassment under Title IX, and take steps reasonably calculated to address such barriers. (34 CFR 106.44, 106.45)

Supportive Measures

Upon receipt of a report of Title IX sexual harassment, the Title IX Coordinator or designee shall promptly contact the complainant to offer and coordinate supportive measures. Supportive measures may vary depending on what the district determines to be reasonably available and shall not unreasonably burden either the complainant or respondent.

Supportive measures shall be provided without charging a fee to the complainant or respondent and be designed to protect the safety of the complainant, respondent, and the District's educational environment, and to provide support during any grievance procedures implemented as specified in 34 CFR 106.45 or informal resolution process as specified in 34 CFR 106.44. The district shall not impose such measures for punitive or disciplinary reasons.

Supportive measures may include, but are not limited to, counseling; extensions of deadlines and other course-related adjustments; changes in class, work, housing, or extracurricular or any other activity regardless of whether there is a comparable alternative; campus escort services; modifications of class schedules; mutual restrictions on contact; changes in class locations;

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increased security; monitoring of certain areas of the campus; and, training and education programs related to sexual harassment. (34 CFR 106.2, 106.44)

Upon the conclusion of any grievance procedures implemented as specified in 34 CFR 106.45 or informal resolution process as specified in 34 CFR 106.44, the District may continue with the supportive measures, or modify or terminate such measures, as appropriate. (34 CFR 106.44)

The District shall not disclose information about supportive measures to any person other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless the disclosure is necessary to providing the supportive measures, or restoring or preserving a party's access to the district's education program or activity. (34 CFR 106.44)

Emergency Removal from School

A student shall not be disciplined for alleged sexual harassment under Title IX until the investigation has been completed. However, on an emergency basis, the District may remove a student from the District's education program or activity, provided that the District conducts an individualized safety and risk analysis, determines that removal is justified due to an imminent and serious threat to the health or safety of a complainant or any student, employee, or other individual arising from the allegations, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This authority to remove a student does not modify a student's rights under the IDEA or Section 504 of the Rehabilitation Act of 1973. (34 CFR 106.44)

If a District employee is the respondent, the employee may be placed on administrative leave during the pendency of the formal complaint process. (34 CFR 106.44)

Dismissal of Complaint

The Title IX Coordinator shall dismiss a formal complaint if the alleged conduct would not constitute sexual harassment as defined in 34 CFR 106.30 even if proved. The Title IX Coordinator shall also dismiss any complaint in which the alleged conduct did not occur in the district's education program or activity or did not occur against a person in the United States, and may dismiss a formal complaint if the complainant notifies the district in writing that the complainant would like to withdraw the complaint or any allegations in the complaint, the respondent is no longer enrolled or employed by the district, or sufficient circumstances prevent the district from gathering evidence sufficient to reach a determination with regard to the complaint. (34 CFR 106.45)

Upon dismissal, the Title IX Coordinator shall promptly notify the complainant of the dismissal and the reasons for the dismissal. Additionally, if the dismissal occurs after the respondent has been notified of the allegations, the Title IX Coordinator shall provide such notification to the respondent, which shall occur simultaneously to both parties if the notification is in writing. The Title IX Coordinator shall also inform the complainant, and the respondent if the dismissal occurs after the respondent has been notified of the allegations, of their right to appeal. Dismissals may be appealed in accordance with the appeal procedures described in the "Appeals" section below. (34 CFR 106.45)

If a complaint is dismissed, the conduct may still be addressed pursuant to Board

Policy/Administrative Regulation 1312.3 – Uniform Complaint Procedures as applicable.

Informal Resolution Process

At any time after the filing of a formal complaint, and prior to reaching a determination regarding responsibility, the District may offer, if it is determined to be appropriate upon receiving information about conduct that reasonably may constitute sexual harassment under Title IX or when a complaint of sexual harassment is made, an informal resolution process, such as mediation, to the complainant and respondent. (34 CFR 106.44)

The District shall not require or pressure a party to participate in the informal resolution process, or to waive the right to an investigation and determination of a complaint as a condition of participation in the district's education program or activity, or exercise of any other right. The district may decline to offer an informal resolution process including, but not limited to, when the district determines that the alleged conduct would present a future risk of harm to others. (34 CFR 106.44)

The district may facilitate an informal resolution process provided that the district, prior to initiating such process: (34 CFR 106.44)

1. Provides the parties with written notice disclosing the allegations; the requirements of the informal resolution process; the right to withdraw from the informal process and resume the formal complaint process; the inability to initiate or resume complaint procedures arising from the same allegations once the informal resolution process is concluded; the potential terms that may be requested or offered in an informal resolution agreement, including that the agreement would only be binding on the parties; and the information that the district will maintain and whether and how the district could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed
2. Obtains the parties' voluntary consent to the informal resolution process
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student

The Title IX Coordinator or designee shall ensure that the facilitator of the informal resolution process is not the same person as the investigator or decisionmaker of any ongoing or newly initiated complaint process specified in 34 CFR 106.45, does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and receives training in accordance with 34 CFR 106.8. (34 CFR 106.44)

Notice of Allegations

If a formal complaint is filed or if the District initiates a formal Title IX investigation, the Title IX Coordinator or designee shall provide the known parties with written notice of the following: (34 CFR 106.45)

1. The District's complaint process, including any informal resolution process
2. Sufficient information, available at the time, to allow parties to respond to the allegations, including, to the extent available, the identity of parties involved in the incident(s), the conduct allegedly constituting sexual harassment, and the date(s) and location(s) of the alleged incident.

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Such notice shall be provided with sufficient time for the parties to prepare a response before any initial interview.

If, during the course of the investigation, new Title IX allegations arise about the complainant or respondent that are not included in the initial notice, the Title IX Coordinator shall provide notice of the additional allegations to the parties.

3. 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 complaint process.
4. The opportunity for the parties to have an advisor of their choice who may be, but is not required to be, an attorney, and the ability to inspect and review evidence.
5. The prohibition against knowingly making false statements or knowingly submitting false information during the complaint process.

The above notice may also include the name of the investigator, facilitator of an informal process, and decisionmaker and shall inform the parties that, if at any time a party has concerns regarding conflict of interest or bias regarding any of these persons, the party should immediately notify the Title IX Coordinator or designee.

Consolidation of Complaints

The District may consolidate complaints of sexual harassment against more than one respondent; by more than one complainant against one or more respondents; or by one party against another party, when the allegations of sexual harassment arise out of the same facts or circumstances. (34 CFR 106.45)

Investigation Procedures

The District shall provide for adequate, reliable, and impartial investigation of complaints. (34 CFR 106.45) During the investigation process, the District's designated investigator shall: (34 CFR 106.45)

1. Provide an equal opportunity for the parties to present fact witnesses, and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible
2. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present evidence
3. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be an attorney
4. Not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding, although the district may establish restrictions regarding the extent to which the advisor may participate in the proceedings as long as the restrictions apply equally to both parties
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate
6. Send in an electronic format or hard copy to both parties and their advisors, if any, the evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint, and provide the parties at least 10 days to submit a written response for the

- investigator to consider prior to the completion of the investigative report
7. Objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and determine credibility in a manner that is not based on a person's status as a complainant, respondent, or witness
 8. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the determination of responsibility, send to the parties and their advisors, if any, the investigative report in an electronic format or a hard copy, for their review and written response

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence 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. (34 CFR 106.45)

Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.

If the complaint is against an employee, rights conferred under an applicable collective bargaining agreement shall be applied to the extent they do not conflict with the Title IX requirements.

Written Decision

The Superintendent shall designate an employee as the decisionmaker to determine responsibility for the alleged conduct, who shall not be the Title IX Coordinator or the investigator. (34 CFR 106.45)

After the investigative report has been sent to the parties but before reaching a determination regarding responsibility, the decision-maker shall afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

The District shall ensure that the decisionmaker is able to question parties and witnesses adequately to assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sexual harassment. (34 CFR 106.45)

The decision-maker shall issue, and simultaneously provide to both parties, a written decision as to whether the respondent is responsible for the alleged conduct. (34 CFR 106.45)

The notification shall include the rationale for such determination and the procedures and permissible bases for the complainant and respondent to appeal, if applicable.

The written decision shall be issued within a reasonably prompt time frame after receiving the complaint. The timeline may be temporarily extended for good cause with written notice to the complainant and respondent of the extension and the reasons for the action. (34 CFR 106.45)

In making this determination, the decision-maker shall use the "preponderance of the evidence" standard for all formal complaints of sexual harassment. The same standard of evidence shall be

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used for formal complaints against students as for complaints against employees. (34 CFR 106.45)

The written decision shall include the following: (34 CFR 106.45)

1. Identification of the allegations potentially constituting sexual harassment as defined in 34 CFR 106.30
2. A description of the procedural steps taken from receipt of the formal complaint through the written decision, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held if the district includes hearings as part of the grievance process
3. Findings of fact supporting the determination
4. Conclusions regarding the application of the district's code of conduct or policies to the facts
5. A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, any disciplinary sanctions the district imposes on the respondent, and whether remedies designed to restore or preserve equal access to the district's educational program or activity will be provided by the district to the complainant
6. The district's procedures and permissible bases for the complainant and respondent to appeal

Appeals

Either party may appeal the district's decision or dismissal of a formal complaint or any allegation in the complaint, if the party believes that a procedural irregularity affected the outcome, new evidence is available that could affect the outcome, or a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision-maker(s) affected the outcome. If an appeal is filed, the district shall: (34 CFR 106.45)

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
2. Ensure that the decision-maker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
4. Issue a written decision describing the result of the appeal and the rationale for the result
5. Provide the written decision simultaneously to both parties

An appeal must be filed in writing within 10 calendar days of receiving the notice of the decision or dismissal, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered.

A written decision shall be provided to the parties within 20 calendar days from the receipt of the appeal.

Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights within 180 days of the date of the most recently alleged misconduct.

The complainant shall be advised of any civil law remedies, including, but not limited to,

injunctions, restraining orders, or other remedies or orders that may be available under state or federal antidiscrimination laws, if applicable.

Remedies

When a determination of responsibility for sexual harassment has been made against the respondent, the district shall provide remedies to the complainant. Such remedies may include the same individualized services described above in the section “Supportive Measures,” but need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent. (34 CFR 106.45)

Corrective/Disciplinary Actions

The district shall not impose any disciplinary sanctions or other actions against a respondent, other than supportive measures as described above in the section “Supportive Measures,” until the complaint procedure has been completed and a determination of responsibility has been made. (34 CFR 106.44, 106.45)

For students in grades 4-12, discipline for sexual harassment may include suspension and/or expulsion. After the completion of the complaint procedure, if it is determined that a student at any grade level has committed sexual assault or sexual battery at school or at a school activity off school grounds, the principal or Superintendent shall immediately suspend the student and shall recommend expulsion. (Education Code 48900.2, 48915)

Other actions that may be taken with a student who is determined to be responsible for sexual harassment include, but are not limited to:

1. Transfer from a class or school as permitted by law
2. Parent/guardian conference
3. Education of the student regarding the impact of the conduct on others
4. Positive behavior support
5. Referral of the student to a student success team
6. Denial of participation in extracurricular or cocurricular activities or other privileges as permitted by law

When an employee is found to have committed sexual harassment or retaliation, the district shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

Record-Keeping

The Superintendent or designee shall maintain, for at least a period of seven years: (34 CFR 106.45)

1. A record of all reported cases and Title IX investigations of sexual harassment, any determinations of responsibility, any audio or audiovisual recording and transcript if applicable, any disciplinary sanctions imposed, any remedies provided to the complainant, and any appeal or informal resolution and the results therefrom
2. A record of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, including the district’s basis for its conclusion that its response was not deliberately indifferent, the measures taken that were designed to restore or preserve equal access to the education program or activity, and, if no supportive measures were provided to the complainant, the reasons that such a response was not unreasonable in light of the known circumstances

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3. All materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), and any person who facilitates an informal resolution process. The district shall make such training materials publicly available on its web site, or if the district does not maintain a web site, available upon request by members of the public. Volunteers who assist students shall complete the "Volunteer Assistance Request" form and be under the immediate supervision of certificated employees. (E.C. 35021)

Approved: 11-25

ORANGE UNIFIED SCHOOL DISTRICT
Orange, California