

### **COMPLAINTS OF SEXUAL HARASSMENT**

Sexually offensive speech and conduct are wholly inappropriate to the operation of the District and will not be tolerated. This policy or a version which provides students adequate notice of the prohibition against sexual harassment, the conduct that constitutes sexual harassment, and the complaint procedure for reporting sexual harassment shall be included in the student handbooks.

It shall be a violation of this policy for any member of the District staff to harass a student through conduct or communications of a sexual nature as defined below or to have romantic or sexual relations with a student. Retaliation in any form against those persons alleging that sexual harassment has occurred or participating in the investigation of the complaint is also prohibited. It shall also be a violation of this policy for students or third parties (i.e., visiting speaker, or visiting athletic team) to harass other students through conduct or communications of a sexual nature as defined below.

Any teacher, counselor or administrator who receives a report, verbally or in writing, from any person regarding sexual harassment of a student or employee must forward that report to the building principal or Title IX Coordinator(s) within one school day or within a reasonable period of time if there is a good cause for the delay. Any building principal receiving a report of sexual harassment shall promptly notify the Title IX Coordinator(s).

The District's designated and authorized Title IX Coordinator is:

Shon Smith, Ed.D.  
Director of Educational Services  
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330-908-6218  
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The designated/authorized Title IX Coordinator and their contact information shall be made known to all applicants for admission and employment, students, parents or legal guardians of students, employees, and all of the District's employee unions. Further, the District shall prominently display on its website the contact information for the Title IX Coordinator.

No person designated by the District to serve as a Title IX Coordinator, investigator, decision maker, or any person designated by the District to facilitate an informal resolution process, shall have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

1. Definitions

- a. Sexual harassment – conduct on the basis of sex that satisfies one or more of the following:
  - (i) A school employee conditioning education benefits on participation in unwelcome sexual conduct (*i.e., quid pro quo*); or
  - (ii) Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity; or
  - (iii) Sexual assault (as defined in the Clery Act, 20 U.S.C. 1092(f)), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act.
- b. Complainant – an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- c. Respondent – an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- d. Formal complaint – a document filed by a complainant or signed by the Title IX Coordinator(s) alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education programs or activities of the District.

2. Duty to Respond

The District will promptly respond when an allegation of sexual harassment occurs in an education program or activity. Education programs and activities include locations, events, or circumstances over which the District exercises substantial control over both the respondent and the context in which the sexual harassment occurs. This may include computer and internet networks, digital platform, and computer hardware or software owned or operated by or used in the operations of the District’s schools.

3. Supportive Measures

“Supportive measures” are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge, to an alleged victim or respondent, before or after the filing of a formal complaint or where no formal complaint has been filed. The purpose of supportive measures is equal access to education.

The District shall offer supportive measures to a complainant. The Title IX Coordinator(s) shall promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

Supportive measures may include:

- a. Counseling;
- b. Extensions of deadlines or other course-related adjustments;
- c. Modifications of class schedules;
- d. Campus escort services;
- e. Mutual restrictions on contact between the parties;
- f. Leaves of absence;
- g. Increased security and monitoring of certain areas of campus.

#### 4. Complaint Procedure

- a. Any student or staff member who alleges sexual harassment by any staff member or student in the District may complain directly to the Title IX Coordinator(s), guidance counselor, teacher, Superintendent, any other school employee whom the student or staff member trusts, or any other individual designated to receive such complaints. An individual who is complaining of sexual harassment is not required to work out the problem directly with the individual alleged to have harassed him or her.

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator(s), or by any other means that results in the Title IX Coordinator(s) receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator(s).

The District will treat a person as a complainant any time it has notice that the person is alleged to be the victim of conduct that could constitute sexual harassment (regardless of whether the person themselves reported, or a third party reported the sexual harassment), and irrespective of whether the complainant ever chooses to file a formal complaint.

- b. Retaliation against those who file a complaint or participate in the investigation of the complaint is prohibited. No employee or representative of the District, nor any other person, may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing. Complaints alleging retaliation may be filed according to the procedures for sex discrimination.

Therefore, filing of a complaint or otherwise reporting sexual harassment will not reflect upon the student's or staff member's status nor will it affect future employment, grades, or work assignments. The person to whom the complaint was made shall, within one school day, report the complaint to the Title IX Coordinator(s). If the Title IX Coordinator(s) or Superintendent is the employee alleged to have engaged in the sexual harassment, the report shall be made to the Board.

- c. The right to confidentiality, both of the complainant and of the respondent, will be respected consistent with the District's legal obligation, and with the necessity to investigate allegations of misconduct and take corrective action when this conduct has occurred. The District will keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, or as required by law, or as necessary to carry out a Title IX proceeding.

## 5. Investigation

- a. The investigator should remember that the investigation requires a balancing of the respondent's rights, the complainant's right to an environment free of sexual harassment, and the Board's interest in a prompt and fair investigation. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the District and not on the parties. The investigator shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- b. The investigator shall send written notice to both parties of the allegations set forth in the complaint upon receipt of a formal complaint. The notice must include sufficient details known at the time, including 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. The notice must include 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; that the parties may have an advisor of their choice, who may be an attorney, and may inspect and review evidence; and notice of any provision in District's Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. If a party chooses to have an advisor, he/she may be accompanied to any related meeting or proceeding by the advisor.

- c. The investigator shall meet with the complainant within a reasonable period of time from the time of making the complaint. However, the investigator is urged to meet with the complainant as soon as possible.
- d. Following the meeting with the complainant, the investigator shall conduct an adequate, reliable, and impartial investigation to determine if sexual harassment has occurred. The investigation shall include a conference with the respondent and the complainant, as well as any and all other methods which are considered necessary to determine whether harassment has occurred. Both parties must be permitted an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The parties shall not be restricted from discussing the allegations under investigation or from gathering and presenting relevant evidence.
- e. The investigator will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the District obtains that party's voluntary, written consent to do so.
- f. Both parties shall be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- g. The District shall provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

6. Post-Investigation Procedures

Prior to completion of the investigative report, the school district must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 school days to submit a written response, which the investigator will consider prior to completion of the investigative report. All such evidence must be subject to the parties' inspection and review and be available at any hearing.

Upon conclusion of the investigation, the investigator shall issue a written report to the parties and their advisors that fairly summarizes the relevant evidence. After the investigative report has been sent to the parties and before reaching a determination regarding responsibility, the decision maker(s) must afford each party the opportunity to submit written, relevant questions that a 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 decision maker(s) must explain to the party proposing the questions any decision to exclude questions as not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision maker must explain to the party proposing the questions any decision to exclude a question as not relevant.

Although the facts and circumstances of a particular investigation may require an investigation to continue beyond 45 school days, it is recommended that the investigation and a report of the findings be completed within that time frame. The report shall include a determination of whether the respondent was found to have engaged in harassment, was found not to have engaged in harassment, or whether the investigation was inconclusive.

The District shall use a preponderance of the evidence standard to make such determination. This shall be the same standard used for both complaints involving students and staff members. The burden rests on the District to meet that standard for purposes of reaching a determination regarding responsibility.

The report shall be issued to the complainant, if an employee, or to the complainant's parents, if a student. A copy of the report shall also be sent to the Superintendent or his/her designee and the respondent.

7. Final Determination

- a. Following receipt of the investigator's report and recommendation, the decision maker (who cannot be the same person as the Title IX Coordinator(s) or investigator) must issue a written decision which sets forth the decision maker's determination of responsibility or non-responsibility based on the relevant standard of evidence. The written decision shall include the following elements:
  1. Identification of the allegations potentially constituting sexual harassment.
  2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held.
  3. Findings of fact supporting the determination.
  4. Conclusions regarding the application of the school district's code of conduct to the facts.
  5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the school district imposes on the respondent, and whether remedies designed to restore or preserve equal access to the school district's education program or activity will be provided by the school district to the complainant.
  6. The District's procedures and permissible bases for the complainant and respondent to appeal.
- b. The decision maker must objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence.
- c. Credibility determinations shall not be made on based on a person's status as a complainant, respondent or witness.
- d. The decision maker must provide his/her written decision to the parties simultaneously within 15 school days of receipt of the investigator's report and recommendation.
- e. The Title IX Coordinator(s) is responsible for effective implementation of any remedies set forth in the written determination.

8. Informal Resolution

The District may offer informal resolution options if a formal complaint is filed, at any time prior to reaching a determination regarding responsibility, provided both parties give voluntary, informed, written consent. The District shall not require, as a condition of enrollment or continuing enrollment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints. Any party has the right to withdraw from informal resolution and resume the grievance process with respect to the formal complaint. The investigator may not require the parties to participate in an informal resolution process. The investigator will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student. If an informal resolution is sought by the parties, a written statement to that effect shall be signed by the parties, and the informal resolution process will conclude within 20 school days of the parties' signature.

9. Appeals

- a. The District will offer both parties the opportunity to appeal from a determination regarding responsibility, and from a dismissal of a formal complaint or any allegations therein on the following bases:
  - (i) Procedural irregularity that affected the outcome of the matter;
  - (ii) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
  - (iii) The Title IX Coordinator(s), investigator, or decision maker had a conflict of interest or bias that affected the outcome of the matter.
- b. An appeal must be submitted in writing to the Title IX Coordinator(s) within five school days of the issuance of the determination regarding responsibility, which includes a statement specifying the grounds for the appeal. The opposing party will be notified of the appeal and provided five school days from such notice to submit to a statement in support of the outcome.
- c. An "Appeal Decision Maker" shall be designated by the Superintendent to review the investigative report and the statements submitted by the parties as part of the appeal. The Appeal Decision Maker shall investigate whether a basis for overturning the decision regarding responsibility exists. The Appeal Decision Maker shall not be the same person as the decision maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator(s).



- d. The Appeal Decision Maker shall issue a written decision describing the result of the appeal and the rationale for the result, and shall provide the written decision simultaneously to both parties and their advisors within 20 school days of the Title IX Coordinator's(s') receipt of a party's notice of appeal of the original decision maker.

10. Dismissal of Complaints

- a. Complaints must be dismissed by the decision maker where the allegations, if true, would not meet the Title IX jurisdictional conditions:
  - (i) The actions complained of do not meet the definition of "sexual harassment";
  - (ii) The actions complained of were not against a person in the United States;
  - (iii) The actions complained of did not occur in the District's education program or activity.
- b. Complaints may be dismissed by the decision maker where:
  - (i) A complainant notifies the Title IX Coordinator(s) in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
  - (ii) The respondent is no longer enrolled or employed by the District; and/or
  - (iii) Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the allegations contained in the formal complaint.
- c. The Title IX Coordinator(s) will promptly send the parties simultaneous written notice of any dismissal decision, and the reason(s) therefore.
- d. Both parties shall have the right to appeal a dismissal decision by submitting written notice of appeal to the Title IX Coordinator(s) within five school days of the issuance of the dismissal notice. The Appeal Decision Maker shall review the notice of appeal and issue a decision regarding the appeal in writing to both parties within 10 school days of the issuance of the notice of dismissal.

11. Discipline and Remedies

A substantiated charge against a student in the District shall subject that student to disciplinary action, including suspension or expulsion, consistent with the Student Discipline Code. A substantiated charge against an employee shall result in the employee being subjected to disciplinary action, up to and including termination. Making a materially false statement in bad faith in the course of an investigation under this policy may subject a student or employee to disciplinary action.

Complainants and respondents shall be treated equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following the grievance process outlined in this policy before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent. All remedies provided by District shall be designed to restore or preserve equal access to the District's education program or activity. Such remedies may include the same individualized services provided as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

12. Training

The District will ensure that Title IX Coordinator(s), investigators, decision makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of the District's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The District shall further ensure that decision makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. The District shall also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinator(s), investigators, decision makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

13. Time Limits

All time limits established in this policy be temporarily delayed or extended by the Title IX Coordinator(s) for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness;

concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

14. Consolidation of Formal Complaints

The District may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

15. Record Keeping

The District shall maintain, for a period of seven years, records of:

- a. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
- b. Any appeal and the result therefrom;
- c. Any informal resolution and the result therefrom;
- d. All materials used to train Title IX Coordinator, investigators, decision makers, and any person who facilitates an informal resolution process. The District shall make these training materials publicly available on its website; and
- e. Records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. The District must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the education program or activity. If the District does not provide a complainant with supportive measures, then the District shall document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

LEGAL REFS: Title IX of the Education Amendments of 1972  
34 C.F.R. 106

Adopted: November 21, 2022