

TITLE IX – Overview (and overview of other unlawful harassment, discrimination and retaliation policies and procedures)

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Administrators In-Service Training
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Title IX Sexual Harassment

- Most recent amendments to Title IX took effect in 2020

Title IX Sexual Harassment

- The following are protected from Title IX sexual harassment:
 - applicants for employment
 - employees
 - students
 - individuals who attend, conduct business, or participate in programs and activities operated by or controlled by the School District.

Title IX Sexual Harassment and Other Unlawful Harassment, Discrimination and Retaliation

- **Guiding Principles and Requirements:**
- The School District does not discriminate on the basis of sex(or on the basis of any other protected category) in its education programs, activities or employment.
- Any inquiries about the application of Title IX to the School District's program or activities may be referred to the Title IX Coordinator, to the Office for Civil Rights Assistant Secretary, or both.

Title IX Sexual Harassment and Other Unlawful Harassment, Discrimination and Retaliation

- **Guiding Principles and Requirements:**
- It is the Policy of the School District to maintain an educational and work environment that is free from unlawful harassment, discrimination and retaliation.
- The School District is committed to providing and promoting an atmosphere where employees and students can engage fully in the workplace and in the learning process.
- Title IX unlawful harassment and other unlawful harassment, discrimination and retaliation will not be tolerated.
- The School District will take every step to resolve complaints in a prompt manner.

Title IX Sexual Harassment and Other Unlawful Harassment, Discrimination and Retaliation

GENERAL IMPORTANT POINTS:

- So-called “harmless” comments of a personal, romantic, flirtatious or sexual nature could be violations of Title IX’s prohibition against sexual harassment/discrimination. Same concept with “harmless” comments about an individual’s race, religion, gender identity, sexual orientation, etc. and potential violations under relevant laws/policies.
- Even if ultimately determined not to be a violation, proceeding through the report, investigation, etc. process to reach that determination uses **precious District resources** and is a **stressful experience**.

Title IX Sexual Harassment

- **General Important Points:**

- Covered by Title IX:

- Sex-based discrimination, including discrimination based on sexual orientation and gender identity
- **Sexual harassment, including harassment based on sexual orientation and gender identity**

Title IX Sexual Harassment and Other Unlawful Harassment, Discrimination and Retaliation

- **General Important Points:**

- The procedures primarily discussed in this training are those related to complaints of Title IX sexual harassment (initial assessment and offering of/proceeding under the Title IX formal grievance process.)
- Policies 103 and 104 also provide the starting points for reporting other forms of unlawful harassment, discrimination and retaliation and investigating the same; however, the formal Title IX grievance process is not used for these matters. Attachment 2 to Policy Nos. 103 and 104 is used instead.

Title IX Sexual Harassment and Discrimination

- **General Important Points:**

Sexual harassment can be:

- employee – employee
- student – employee
- employee - student
- student – student
- applicants for employment against any of the above or below, or any of the above or below against them
- individuals who attend, conduct business, or participate in programs and activities operated by or controlled by the School District against any of the above, or any of the above against them

Title IX Sexual Harassment and Other Unlawful Harassment, Discrimination and Retaliation

- **General Important Points:**

- See other reporting obligations under other District policies, laws and regulations. (ex., Child Abuse, Educator Misconduct)
- *When in doubt, report.*

Title IX Sexual Harassment and Other Unlawful Harassment, Discrimination and Retaliation

District Policies:

No. 103, “Discrimination/Title IX Harassment Affecting Students”

No. 104, “Discrimination/Title IX Harassment Affecting Staff”

*Harassment and retaliation are also covered under both of the above policies.

Title IX Sexual Harassment and Other Unlawful Harassment, Discrimination and Retaliation

- **Definitions**

- "Complainant" means an individual who is alleged to be the victim
- "Respondent" means an individual who is alleged to be the perpetrator

Title IX Sexual Harassment

- **Definitions**
- "Formal complaint" means a document **filed by a complainant or signed by the Title IX Coordinator** alleging Title IX sexual harassment by a respondent and requesting that the District investigate the allegation.

Title IX Sexual Harassment

- **Definitions**
- “Education program or activity” includes locations, events, or circumstances over which the District exercised substantial control **over both the respondent and the context in which the sexual harassment/discrimination occurs.**

Title IX Sexual Harassment

- **Definitions**

- "Sexual harassment" is defined as conduct on the basis of sex that satisfies **one or more** of the following:

(1) An employee of the School District conditioning the provision of an aid, benefit or service of the School District on an individual's participation in unwelcome sexual conduct;

Title IX Sexual Harassment

Definitions

- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the School District's education program or activity;
- (2) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v) of the Clery Act, "dating violence" as defined in 34 U.S.C. 12291(a)(10) of the Violence Against Women Act (VAWA), or stalking as defined in 34 U.S.C. 12991(a)(30) of the VAWA.

Title IX Sexual Harassment

Definitions

"Supportive measures" are:

one of the most crucial elements of Title IX compliance

non-disciplinary, **non-punitive** individualized services offered as appropriate, as reasonably available, and without fee or charge to the **complainant** or the respondent **before or after the filing of a formal complaint or where no formal complaint has been filed.** (distinguish from remedies)

designed to restore or preserve equal access to the School District's programs or activities **without unreasonably burdening the other party**, including measures to protect the safety of all parties or the educational environment, or to deter sexual harassment.

may include counseling, extensions of deadlines or other course-related adjustments, modifications to work or class schedules, monitoring, campus escort services, leaves of absence, increased security, mutual restrictions on contact, assistance from domestic violence or rape crisis programs, and other similar measures.

Title IX Sexual Harassment

Definitions

"Supportive measures" may include manifestation determinations, FBAs, assessments, etc.

BUT

Need to ensure that punitive measures are not being taken prematurely (see later training, and slides for Title IX Coordinator, decision maker, investigator, appeal authority, and special education personnel) **AND**

Need to ensure that supportive measures do not deprive any involved student of FAPE

Title IX Sexual Harassment and Other Unlawful Harassment, Discrimination and Retaliation

- **Retaliation Prohibited**

- The Board prohibits retaliation by the district or any other person against any person for:
 1. Reporting or making a formal complaint of any form of discrimination, harassment or retaliation, including Title IX sexual harassment.
 2. Testifying, assisting, participating or refusing to participate in a related investigation, process or other proceeding or hearing.
 3. Acting in opposition to practices the person reasonably believes to be discriminatory, harassing or retaliatory.

Title IX Sexual Harassment and Other Unlawful Harassment, Discrimination and Retaliation

- **Retaliation Prohibited**
- The district, its employees and others are prohibited from **intimidating, threatening, coercing, or discriminating against** anyone for actions described above.
- **Policy: Individuals** are **encouraged** to contact the Title IX Coordinator immediately if retaliation is believed to have occurred.
- **Best practice: Employees (and volunteers)** should be **required** to contact the Title IX Coordinator immediately if retaliation is believed to have occurred.

Title IX Sexual Harassment and Other Unlawful Harassment, Discrimination and Retaliation

- Retaliation does not include:
- the exercise of rights protected under the First Amendment
- charging an individual with a Code of Conduct or Policy violation for making a materially false statement in bad faith in the course of the grievance proceeding.
- *Contact solicitor*

Title IX Sexual Harassment and Other Unlawful Harassment, Discrimination and Retaliation

- Making Informal Complaints/Reports

Important: Policies 103 and 104 only explicitly address Title IX sexual harassment and other discrimination/harassment/retaliation against students and staff, and do not require reporting in every instance (required to report when a student is alleged victim; not as clear otherwise.)

Recommended practice: Employees (and volunteers) should also be required to report suspected Title IX sexual harassment against other employees as well as applicants for employment and individuals (including volunteers) who attend, conduct business, or participate in programs and activities operated by or controlled by the School District, AND should be required to report all other suspected unlawful discrimination, harassment and retaliation. The procedures of Policies 103 and 104 and their Attachments should be followed for reporting.

Title IX Sexual Harassment and Other Unlawful Harassment, Discrimination and Retaliation

- Making Informal Complaints/Reports

All District employees (and volunteers): You must report, if you:

- ***witnessed the conduct first-hand***
- ***received information directly reported to you***
- ***overheard discussion of the matter, even if you did not hear it in a school/extra-curricular setting***
- ***witnessed or learned of the matter by any means at all***

Title IX Sexual Harassment

- The overriding principles governing current Title IX framework are:
 - prompt reporting of any possible violation
 - prompt and thorough follow-through
 - proper and thorough documentation
 - supportive measures
 - due process and fairness to all concerned
 - freedom from bias
 - *Through all the above → strive to avoid deliberate indifference*
 - *These are also good general principles for addressing all unlawful harassment, discrimination and retaliation.*

Title IX Sexual Harassment

Formal Complaints

Formal complaints regarding sexual harassment are filed by a complainant or Title IX Coordinator, alleging sexual harassment or discrimination against a respondent and requesting the School District to investigate the allegation.

Title IX Sexual Harassment

Formal complaints

A parent or guardian may file a formal complaint on a student's behalf.

A student can make a report on his/her own behalf, but the parents must be **notified** if the student is under 18 (and should probably be notified even if over 18(?)) unless a health/safety/welfare threat is present.

The parents of the respondent must also be notified, if the matter proceeds to a formal complaint (and potentially before then as well).

As to who makes decisions regarding filing a formal complaint, etc., generally the student can make the decision if over 18, but solicitor should be consulted in case of conflicting wishes in family, special education student, or other special considerations.

Attachment 3: “Parents/Guardians have the right **to act on behalf of** the complainant, the respondent, or other individual at any time.”

What if student is 18? What if there is a disagreement between student and family regarding the key decision as to whether to file a formal complaint, regardless of student's age?

Consult with solicitor

Title IX Sexual Harassment

Grievance Process

After the filing of a formal complaint, the District shall follow the grievance process, which shall:

- *include the **presumption of the respondent's innocence** until a determination regarding responsibility is made at the conclusion of the grievance process*
- *be **free of bias** (including bias for or against complainants or respondents generally **or** an individual complainant or respondent) and discriminatory treatment of any party*
- *include an **objective evaluation** of all evidence*
- *be **free of conflict of interest** for any person involved in the process*

Title IX Sexual Harassment

Grievance Process

After the filing of a formal complaint, the District shall follow the formal grievance process which shall include and require numerous elements, including:

- reasonably prompt timeframes
- **remedies** shall be designed to restore or preserve equal access to the District's education program or activity; **such remedies may include supportive measures, but need not be non-disciplinary or non-punitive, and need not avoid burdening the respondent; the Title IX Coordinator is responsible for the effective implementation of any remedies**
- **Full range of disciplinary options may be applied as appropriate**

Title IX Sexual Harassment

Grievance Process

After the filing of a formal complaint, the District shall follow the grievance process, which shall include and require:

- procedures for investigation and for appeal by the respondent or complainant (Attachment 3)

Title IX Sexual Harassment

Grievance Process

Notice of Allegations and Other Key Information

- Providing notice to complainant and respondent informing of key issues and procedures, after receiving formal complaint, is Title IX Coordinator's responsibility.

Title IX Sexual Harassment

Grievance Process

Notice of Allegations

- Important issues of which to be aware: (see also all notice to be provided under Attachment 3)
 - The parties must be notified that the respondent is **presumed not responsible** and that responsibility will be determined upon conclusion of the grievance procedure.
 - The parties must be notified that each party will have **equal opportunity** to present evidence and inspect and review evidence received.
 - The **burden of proof** and of gathering evidence sufficient to reach a determination regarding responsibility is on the School District.

Title IX Sexual Harassment

Grievance Process

- Investigation is conducted
 - The Title IX Coordinator may also be the investigator, or these can be separate parties.
 - The decision maker and appeal authorities must be separate parties.

Title IX Sexual Harassment

Grievance Procedure

Written Determination

The decision-maker (who is not permitted to be the same person as the Title IX Coordinator or investigator) will conduct an objective review of all relevant evidence, the parties' written responses, if any, to the investigative report, and answers to written questions submitted by parties to each other/witnesses.

The decision-maker shall issue a written determination regarding responsibility or dismissal.

Title IX Sexual Harassment

Grievance Process

Written Determination

- The written determination shall be issued to both parties simultaneously (*and their advisors; generally include advisors and parents/guardians in all notices/correspondence*) and shall include the process to appeal.
- The written determination becomes a final adjudication unless a timely appeal is filed.

Title IX Sexual Harassment

Grievance Process

Appeals

The appeal authority shall hear appeals on:

- procedural issues that could affect the outcome
- new evidence not available at time of determination that could affect the outcome
- allegations that the Title IX Coordinator, investigator or decision-maker **had a conflict of interest or bias for or against complainants or respondents generally or against the complainant or respondent in this specific manner, *that affected the outcome of the matter.***

Title IX Sexual Harassment

Grievance Process

Appeals

Upon notification of the filing of a Notice of Appeal, each party shall have the opportunity to submit a written statement in support of, or challenging, the outcome of the written determination.

The designated appeal authority shall issue a written decision simultaneously to both parties describing the result of the appeal and the rationale.

Title IX Sexual Harassment and Discrimination

Grievance Process

Remedies

- The complainant shall be provided with an appropriate remedy or remedies where a determination of responsibility has been made against the respondent through the grievance process.
- Remedies shall be designed to restore or preserve equal access to the District's education program or activity. **Such remedies may include supportive measures, but need not be non-disciplinary or non-punitive, and need not avoid burdening the respondent.**
- **The Title IX Coordinator is responsible for the effective implementation of any remedies (ensure remedies are implemented by appropriate District officials and follow up as needed to assess effectiveness.)**

Title IX Sexual Harassment and Discrimination

Grievance Process

Remedies

- Discipline will **also** be applied for:
 - Retaliation
 - Providing false information

Title IX Sexual Harassment and Other Unlawful Harassment, Discrimination and Retaliation

Title IX Coordinator also has designated responsibilities under District Policy to ensure adequate nondiscrimination procedures are in place, to recommend new procedures or modifications to procedures and to monitor the implementation of the district's nondiscrimination procedures in the following areas, as listed in Policies 103 and 104.

Additional Important Notes

- The Director of Special Education should be contacted as early in the process as possible for special education/thought to be special education students, to ensure that appropriate supports, evaluations, and other considerations are addressed.
- After a written determination is issued, discipline is recommended if appropriate (as part of written determination), and can be applied on Title IX issues (student, employee or volunteer) **after** the appeal period has lapsed or appeal is filed and found to be without merit. Depending upon the discipline, student/employee due process steps may be required under law and district policy; stay the discipline to account for appeal issues as discussed above.
- A manifestation determination will need to be conducted prior to disciplinary changes in placement for special education students. (No disciplinary change of placement is to be issued, even if agreed upon by the parties, if the violation is determined to be a manifestation of a student's disability.)
- The solicitor should be contacted before discipline or emergency removal of an employee.

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