

Equal Opportunity

Prohibition Against Sexual Harassment and Retaliation under Title IX

This Policy governs a complaint of sexual harassment or retaliation of a student or employee, as such conduct is defined and regulated under Title IX of the Education Amendments of 1972, and that is alleged to have occurred on or after August 14, 2020. If any provision of Title IX or its regulations is held invalid or unenforceable by a court, agency, or department with legal jurisdiction over the District, the corresponding provisions in this Policy shall likewise be rendered invalid and not enforced.

A complaint by students, employees, parents, and patrons of the District alleging harassment, discrimination, or related retaliation based on a protected classification under the laws identified in Policy 1300 (outside of Title IX) should be filed in accordance with the procedures outlined in Regulation 1300. A complaint regarding the identification, evaluation, educational program, or placement of a child with a disability under Section 504 of the Rehabilitation Act of 1973 should be filed in accordance with the procedures outlined in Regulation 2110.

DISTRICT'S TITLE IX COORDINATOR

The following person has been designated as the District's Title IX Coordinator:

[Insert the following information below for each designated Title IX Coordinator; the Compliance Officer is designated in Policy and Regulation 1300 and may be the same person. The District may choose to include only the position title, rather than an individual's name, but the address, phone number, and email must be connected to the designated individual.]

Title and/or Name
Address
Number
Email

The District has designated the Title IX Coordinator with the responsibility to identify, prevent, and remedy unlawful harassment and retaliation under Title IX in the District. The Title IX Coordinator is in charge of assuring District compliance with Regulation 1301 and Title IX of the Education Amendments of 1972. See Policy and Regulation 1300 for the individual(s) designated by the District to be the Compliance Officer with the responsibility to identify, prevent, and remedy unlawful discrimination and harassment in accordance with Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; as well as other state and federal nondiscrimination laws.

DEFINITIONS

For the purpose of this Regulation, the following terms are defined:

Actual Knowledge: Notice of sexual harassment or allegations of sexual harassment to any employee (other than the respondent) in an education program or activity of the District against a person in the United States. Actual knowledge does not include constructive notice.

Complainant: An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Day: A calendar day. All timeframes and deadlines may be extended by the District for good cause, including but not limited to Board-approved holiday breaks and building closures.

Education program or activity: Locations, events, or circumstances over which the District exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

Formal complaint: A document filed by a complainant, or a parent or legal guardian of a student complainant, alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment. Additionally, a formal complaint can be completed and signed by the Title IX Coordinator, if, in their sole discretion, they conclude that the District needs to conduct an investigation based on information in their possession, regardless of the complainant's interest in filing a formal complaint. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the District. The complainant must physically or digitally sign the formal complaint, or otherwise indicate that the complainant is the person filing the formal complaint. If the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant.

Respondent: An individual who is reported to be the perpetrator of conduct that could constitute sexual harassment.

Retaliation: Intimidation, threats, coercion, or discrimination of an individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report of complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under this Regulation.

Sexual harassment: Conduct on the basis of sex that satisfies one or more of the following:

1. A District employee conditioning an aid, benefit, or service of an education program or activity on an individual's participation in unwelcome sexual conduct;
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 education program or activity; or
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or

stalking” as defined in 34 U.S.C. 12291(a)(30).

Supportive measures: Non-disciplinary, non-punitive, individualized services. Appropriate supportive measures shall be offered to the complainant and may be offered the respondent, as appropriate and depending on the individual circumstances of the situation. Supportive measures may include, but are not limited to, physical separation, contact limitations, reassignment, alternative work or assignments, altering class or bus seating assignments, additional supervision, counseling, training, and conferences.

Illustrations and Examples of Prohibited Sexual Harassment

For the purpose of this Regulation, the determination if conduct is prohibited under Title IX is a fact-intensive question that shall be considered on a case-by-case basis. Legitimate, non-sexual physical conduct necessary to avoid physical harm to persons or property, to console an individual, or spontaneous movement during a sporting activity is not sexual harassment.

Depending on the circumstances and application of the definitions immediately above in this Regulation, examples of conduct which may or may not constitute sexual harassment, include, but are not limited to:

- sexual advances;
- request for sexual favors;
- threatening an individual for not agreeing to submit to sexual advancement;
- sexually motivated touching of an individual’s intimate parts;
- coercing, forcing, or attempting to coerce or force the touching of an individual’s intimate parts;
- display of drawings, graffiti, cartoons, pictures, symbols or other written material of a sexual nature;
- sexual gestures;
- sexual or dirty jokes;
- sexually provocative or explicit speech;
- communications about or rating an individual as to their body, sexual activity, or performance; and
- verbal abuse of a sexual nature.

OBLIGATION TO REPORT

The District is steadfastly committed to providing an inclusive environment that is free from sexual discrimination and harassment for all of its students and staff. Staff with actual knowledge of behaviors that may constitute sexual harassment and related retaliation as defined in this Regulation shall report it to the Title IX Coordinator. When a formal complaint is filed with the Title IX Coordinator, the grievance process detailed below will be used. Reports of sexual harassment and/or related retaliation must contain as much specific information as possible to allow for proper assessment of the nature and extent of the investigative procedures.

RESPONSE TO ACTUAL KNOWLEDGE OF SEXUAL HARASSMENT OR RELATED RETALIATION

When the District has actual knowledge of sexual harassment or related retaliation under Title IX, the Title IX Coordinator shall:

1. Promptly contact the complainant to discuss the availability of supportive measures;
2. Consider the complainant's wishes with respect to supportive measures;
3. Explain the process for filing a formal complaint under this Regulation; and
4. Inform the complainant of the availability of supportive measures regardless of whether a formal complaint is filed under this Regulation.

The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process outlined in this Regulation. The District will only impose disciplinary consequences against a respondent for violations of this Regulation after the grievance process has been completed; however, the District may impose disciplinary consequences against a respondent for other violations of the District's Board of Education Policies prior to the conclusion of the grievance process outlined in this Regulation. If there is an immediate threat to the physical health or safety of any student arising from the allegation of sexual harassment that justifies removal, the respondent's placement shall be changed, including removal from the District. Immediately following the removal, the respondent shall be given notice and an opportunity to challenge the decision to the Superintendent in writing. The Superintendent shall issue a written decision on the respondent's challenge and such decision shall be final. If the respondent is an employee, the employee may be placed on administrative leave during the pendency of the grievance process.

GRIEVANCE PROCESS FOR FORMAL COMPLAINT

During the grievance process for a formal complaint, the District shall treat the complainant and the respondent equitably. The District will ensure that relevant evidence is objectively evaluated, including both inculpatory and exculpatory evidence, and that credibility determinations are not based on a person's status as a complainant, respondent, or witness. Additionally, the Title IX Coordinator, the investigator, all decision-makers, and any facilitator of the informal resolution process shall not have a conflict of interest or bias for or against complainants or respondents generally or individually. Furthermore, the District 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.

Formal Complaint

Formal complaints of sexual harassment under this Regulation must be submitted to the Title IX Coordinator.

A charge or complaint of sexual harassment or retaliation filed with an outside agency does not constitute a formal complaint with the District or trigger the District's obligation to follow the formal complaint grievance process as contemplated under this Regulation.

If a formal complaint involves allegations against the Title IX Coordinator, the formal complaint shall be filed directly with the Superintendent, unless the Superintendent is the Title IX Coordinator, or President of the Board of Education.

Upon receipt of a formal complaint, the Title IX Coordinator shall promptly:

1. Provide written notice of the allegations, the grievance process, and any informal resolution process to the complainant and the respondent to give both parties the proper time to prepare a response before an interview;
2. Inform the complainant and the respondent of the prohibition against making false statement or knowingly submitting false information;
3. Inform the complainant and the respondent that they may have an advisor (who may be but who is not required to be an attorney) present during any of their own subsequent meetings; and
4. Offer supportive measures in an equitable manner to the complainant and the respondent, when appropriate.

The Title IX Coordinator, at their discretion, may consolidate formal complaints if they arise out of the same facts or circumstances. If, in the course of the investigation process as outlined below in this Regulation, the investigator decides to investigate new allegations about the complainant or the respondent that are not included in a written notice previously provided to the complainant and respondent, the Title IX Coordinator will provide another written notice of the additional allegations to the complainant and the respondent.

The Title IX Coordinator must dismiss a formal complaint for any of the following reasons:

1. The conduct alleged in the formal complaint would not constitute sexual harassment even if proved.
2. The conduct alleged in the formal complaint did not occur in the District's education program or activity.

3. The conduct alleged in the formal complaint did not occur within the United States.

The Title IX Coordinator may dismiss a formal complaint for any of the following reasons:

1. The complainant has notified the District in writing that the complainant would like to withdraw the formal complaint or any allegations.
2. The respondent is no longer enrolled or employed by the District.
3. Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint.

If the Title IX Coordinator dismisses a formal complaint, written notice of the dismissal, including the reasons for dismissal, shall be provided to the complainant and the respondent. If a complainant or respondent wishes to appeal a dismissal of a formal complaint, they should follow the appeal process outlined in this Regulation. Dismissal of a formal complaint does not preclude the District from investigating, taking action, or imposing discipline outside of this Regulation related to the alleged conduct and in accordance with any other Board policy or regulation.

Investigation

The Title IX Coordinator, or a designee, shall serve as the investigator and be responsible for investigating formal complaints in an equitable manner that involves an objective evaluation of all relevant evidence. The District may appoint an outside investigator when appropriate. A subordinate shall not investigate his or her supervisor.

The burden for obtaining evidence sufficient to reach a determination regarding responsibility rests on the District and not the complainant or respondent.

The investigator shall initiate an investigation within five (5) days of the receipt of the formal complaint by the Title IX Coordinator, unless good cause exists to extend this timeframe. All investigations shall:

1. Provide an equal opportunity for the complainant and the respondent to present witnesses and evidence;
2. Not restrict the ability of either the complainant or the respondent to discuss the allegations under investigation or to gather and present relevant evidence;
3. Refrain from requiring, allowing, relying upon, or otherwise using questions or evidence that seek disclosure of information protected under a legally recognized privilege unless such privilege has been waived;
4. Provide the complainant and the respondent with the same opportunities to have an advisor present during any grievance proceeding;

5. Provide to the complainant and the respondent whose participation is requested written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient time for the individual to prepare to participate;
6. Provide the complainant and the respondent an equal opportunity to inspect and review any evidence directly related to the allegations in the formal complaint; and
7. Result in the creation of an investigative report that fairly summarizes relevant evidence.

Employees and students should fully cooperate with the investigation process under this Regulation.

Prior to the completion of the investigative report, the investigator shall send to the complainant and the respondent the evidence related to the investigation to inspect and review. The complainant and the respondent shall have ten (10) days to submit a written response which the investigator shall take into consideration in creating the final investigative report.

At the close of the investigation, a written final investigative report will be delivered to the complainant and the respondent. The final investigative report should be completed within thirty (30) days of the initiation of the investigation, unless good cause exists to extend this timeframe.

Upon receipt of the final investigative report, the complainant and the respondent shall have ten (10) days to submit a written response to the report to the investigator and to submit written, relevant questions to be asked of any party or witness prior to the determination of responsibility.

Determination of Responsibility

For the purposes of a determination of responsibility, the decision-maker shall be the Superintendent or their designee; however, the decision-maker shall not be the Title IX Coordinator or the investigator. The decision-maker shall receive the final investigative report as well as any written responses and additional questions to be asked that were timely submitted by the complainant and the respondent. Upon a determination of relevance, the decision-maker will facilitate the exchange of written questions as submitted by the complainant and the respondent, provide the complainant and the respondent with submitted answers (if any), and allow for additional, limited follow-up questions from the complainant and respondent.

Within a reasonably prompt time frame, the decision-maker shall make a determination of responsibility based on the final investigative report, the evidence, and all written responses timely submitted by the complainant and the respondent, and without any live testimony or hearing.

The decision-maker shall provide the written determination to the complainant and the respondent, along with information regarding the procedures and allowable bases to appeal the decision. The written determination shall include:

1. 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, and methods used to gather other evidence;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the District's code of conduct to the facts; and
5. A statement of, and rationale for, the result as to each allegation, including a determination 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 education program or activity will be provided by the recipient to the complainant.

The preponderance of the evidence standard shall be used in making a determination of responsibility.

If a determination of responsibility against a respondent is made, the District shall impose consequences as described below in this Regulation. After a determination of responsibility is made, the Title IX Coordinator shall work with the complainant to determine if further supportive measures are necessary. The Title IX Coordinator shall also determine whether any other actions are necessary to prevent reoccurrence of the harassment and to restore equal access to the education program or activity.

Appeal

Either the complainant or the respondent may appeal from a determination of responsibility or a dismissal of a formal complaint (or any allegations therein) for any of the following reasons:

1. A procedural irregularity that affected the outcome of the investigation;
2. New evidence that was not reasonably available at the time of the determination and that could affect the outcome of the investigation; or
3. A conflict of interest on the part of the Title IX Coordinator, investigator, or decision-maker.

Appeals shall be submitted to the Title IX Coordinator within five (5) days of a determination of responsibility or dismissal of a formal complaint (or any allegation therein). If an appeal is not timely submitted, the determination of responsibility or the dismissal of a formal complaint (or any allegation therein) becomes final.

Upon receipt of an appeal, the Title IX Coordinator shall provide written notice of the appeal to

the complainant and the respondent. During the appeal process, the complainant and the respondent shall have a reasonable, equal opportunity to submit written statements in support of or in challenge of the appeal to the designated decision-maker on appeal; however, both the complainant and the respondent are limited on appeal to submission of only written statements. There will be no live or oral testimony.

After review of the appeal, investigative report, and any written statement submitted by the complainant and the respondent, the designated decision-maker on appeal, who shall not be the Title IX Coordinator, investigator, or the decision-maker of a dismissal or determination of responsibility, shall issue a written decision describing the result of the appeal and the rationale for the result. The written decision shall be provided to the complainant and the respondent. This decision shall be final.

Informal Resolution

At any time after a formal complaint is filed and prior to reaching a determination regarding responsibility, the District may facilitate an informal resolution process to address the allegations made in the formal complaint. The informal resolution process is voluntary and does not involve a full investigation and adjudication under the grievance process in this Regulation. If the complainant and respondent both elect to engage in the informal resolution process, their voluntary consent shall be made in writing and all timeframes and deadlines in this Regulation shall be suspended.

An informal resolution may include, but is not limited to the following:

- If the complainant so desires, an opportunity for the complainant to explain to the respondent that his or her conduct is unwelcome, offensive or inappropriate, either in writing or face-to-face;
- A statement from a staff member to the respondent that the alleged conduct is not appropriate and could lead to discipline if proven or repeated;
- Developing a safety plan;
- Separating students; or
- Providing staff and/or student training.

The informal resolution process shall not be made available to formal complaints alleging sexual harassment under this Regulation of a student by an employee.

RETALIATION

The District prohibits retaliation against a person who files a formal complaint of sexual harassment under this Regulation, and further prohibits retaliation against a person who participates in related investigations.

Notwithstanding this provision, employees or students found to have intentionally made knowingly false or materially misleading allegations of suspected harassment and/or related retaliation under this Regulation may be disciplined, up to and including dismissal or expulsion.

CONFIDENTIALITY

The District will respect the privacy of the complainant, the respondent, and the witnesses to the extent possible, consistent with applicable law as well as the District's legal obligations to investigate, to take appropriate action, and to conform with disclosure obligations as identified in this Regulation.

The complainant and the respondent shall not disclose any information obtained during the grievance process in violation of the Family Educational Rights and Privacy Act or for any purpose outside of participation in the grievance process.

CONSEQUENCES

Where a determination of responsibility for sexual harassment or related retaliation as defined in this Regulation has been made, the District will provide remedies to the complainant designed to restore or preserve equal access to the District's education program or activity.

Consequences for violations of this Regulation may have educational, restorative, rehabilitative and/or punitive components.

Conduct constituting sexual harassment or related retaliation as defined in this Regulation will be subject to discipline including, but not limited to, written warning or reprimand, conference, required training, "no contact" order, reassignment, probation, suspension or termination for employees, suspension or expulsion for students, or exclusion from District property.

In the event that the evidence suggests that the conduct at issue is also a crime in violation of a Missouri criminal statute, the Title IX Coordinator shall report the conduct to the appropriate law enforcement agency charged with responsibility for handling such crimes.

As required by and in compliance with law and District policy, a report will be made to the Missouri Children's Division if there is reasonable cause to suspect abuse or neglect of a child.

RECORD KEEPING

The District shall maintain for a period of seven (7) years records of the following:

1. Each investigation and determination of responsibility made under this Regulation, including disciplinary sanctions imposed on the respondent and remedies provided to the complainant;
2. Any appeal decided under this Regulation;

3. Any informal resolution reached under this Regulation;
4. Materials used for training the Title IX Coordinator, investigator, decision-makers, and facilitators of the informal resolution process under this Regulation; and
5. Actions taken in response to actual knowledge of sexual harassment or related retaliation under this Regulation, including supportive measures designed to restore or preserve equal access to the District's education program or activity.

TRAINING & PUBLICATION OF POLICY

The District will train its employees on the definition of sexual harassment and retaliation under this Regulation and the duty to report when they have actual knowledge of sexual harassment. This training will be provided to employees on an annual basis, and at such other times as the Superintendent, in consultation with the District's Title IX Coordinator, determines is necessary or appropriate. Additionally, the District will provide training to the Title IX Coordinator, investigator, decision-makers, and facilitators of the informal resolution process on identifying, investigating, and reporting on acts that may constitute sexual harassment or related retaliation under Title IX, and such training materials will be posted on the District's website. District students will be notified regarding this Regulation. This Regulation will be posted on the District's website and available in Central Office.

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