

REGIONAL OFFICE OF EDUCATION #21

TITLE IX SEXUAL HARASSMENT GRIEVANCE POLICY

Pursuant to Title IX, the Regional Office of Education does not discriminate on the basis of sex in any of the education program or activities it operates. This applies to all applicants for admission and employment, students, parents or legal guardians, employees, and all unions or professional organization with which the ROE holds a collective bargaining or professional agreement.

Additionally, Sexual harassment, as defined by Title IX, is prohibited. Any person may report sex discrimination, including sexual harassment, in person, by mail, by telephone, or by electronic mail, using the contact information listed below for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. The person reporting does not have to be the allege victim of sexual harassment. Such a report may be made at any time (including during non-business hours) by using the telephone number, electronic mail address, mailing address listed below for the Title IX Coordinator.

Title IX defines sexual harassment to mean conduct on the basis of sex that satisfies one or more of the following:

- (1) An ROE employee conditioning the provision of any aid, benefit, or service of the ROE 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 ROE's 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). (See Section VI "Key Definitions" below for extended definitions).

(hereinafter referred to as "Title IX Sexual Harassment"). Sexual harassment prohibited by this policy includes verbal or physical conduct. Examples of such conduct include but are not limited to off color jokes and the display or transmittal of sexually explicit or suggestive pictures.

I. Reporting Sexual Harassment:

Any person wishing to make a report of Title IX Sexual Harassment may bring such report to the attention of the Title IX Coordinator, the non-discrimination coordinator, a supervisor, principal, dean, or other ROE employee whom they feel comfortable discussing the matter with.

All school employees in receipt of such a report shall promptly forward the information to the ROE's Title IX Coordinator. Failure to promptly forward reports of Title IX Sexual Harassment to the Title IX Coordinator may result in discipline, up to and including dismissal.

Title IX Coordinator:

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Upon receipt of a report of sexual harassment, the Title IX Coordinator and/or his/her designee shall contact the Complainant to discuss the following:

- (1) The availability of supportive measures. This includes taking consideration of the Complainant's wishes with respect to supportive measures and informing the Complainant of the availability of supportive measures, with or without filing a Formal Complaint.
- (2) The process for filing a Formal Complaint.

In addition to reviewing the report of sexual harassment under the District's Title IX Sexual Harassment Grievance Procedure, the Title IX Coordinator will review existing ROE policies to determine whether the reported conduct violates another provision that must be reviewed under the Uniform Grievance Procedure.

All responses to reports of Title IX Sexual Harassment will treat the Complainant and Respondent equitably by offering supportive measures to Complainant, and by following the ROE's Title IX grievance process before imposing any disciplinary sanctions or other actions that are not supportive measures against a Respondent.

II. Filing a Formal Complaint:

A Complainant may elect to file a Formal Title IX Sexual Harassment Complaint ("Formal Complaint"). In response to any Formal Complaint that is filed, the Title IX Coordinator will initiate the ROE's Title IX grievance process (described in Section III, below) which fully complies with 34 C.F.R. § 106.45.

If a Complainant elects not to file a Formal Complaint, the Title IX Coordinator may sign a Formal Complaint alleging Title IX Sexual Harassment against a Respondent, which will initiate the District's Title IX grievance process.

The ROE will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of sexual harassment, a Complainant, any individual who has been reported to be the perpetrator of sex discrimination, a Respondent, and any witness, except as may be permitted or required by law, or to carry out the purposes of Title IX, including the conduct of any investigation or judicial proceeding arising hereunder.

III. Grievance Process for a Formal Title IX Sexual Harassment Complaint:

A. **General Rules:**

- (1) **Equitable Treatment of Complainant and Respondent:** Complainant and Respondent will be treated equitably. The ROE will follow a grievance process that does not impose any disciplinary sanction on a Respondent or actions that are not supportive measures until a determination of responsibility has been reached at the conclusion of the grievance process. In the event of a determination of responsibility against the Respondent, the Complainant will be provided remedies that are designed to restore or preserve equal access to the ROE's education programs or activities. Remedies may include the same individualized services defined below as "supportive measures;" however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

- (2) **Presumption that Respondent is Not Responsible.** Until a determination regarding responsibility is issued at the conclusion of the grievance process, the ROE will presume the Respondent is not responsible for the alleged conduct.
- (3) **Objective Evaluation of all Relevant Evidence.** The ROE will require that, under the grievance process, all relevant evidence – including exculpatory and inculpatory – is objectively evaluated. Credibility determinations will not be based on a person’s status as a Complainant, Respondent, or witness.
- (4) **Evidence.** The ROE does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, e.g., attorney-client privilege, doctor-patient privilege, or spousal privilege, unless the person holding such privilege has waived the privilege.
- (5) **No Bias, No Conflict of Interest.** Any individual designated by the ROE as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate 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.
- (6) **Training Requirements.** Any individual designated by the ROE as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process will receive training on the definition of Title IX Sexual Harassment; the scope of the ROE’s education programs and activities; how to conduct an investigation; the grievance process, including appeals and the informal resolution processes; and how to serve impartially, including how to avoid prejudgment of the facts at issue, conflicts of interest, and bias.

Decision-makers will receive training 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.

Investigators will receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of Title IX Sexual Harassment.

- (7) **Conclusion of the Grievance Process in a Reasonably Prompt Time Frame.** The formal grievance process, starting with the date the Formal Complaint is signed and concluding on the date the determination of responsibility is issued, shall take no more than 90 school business days. Prompt timelines will also be implemented for filing and resolving appeals and for managing information resolution processes. “School business days”, for purposes herein, means days on which the ROE’s main office is open. Temporary delays of the grievance process or limited extensions of time for completing the process shall be permitted for good cause, with written notice of such being issued to the Complainant and the Respondent informing them of the delay or time extension and the reasons, therefore. 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.

(8) **Range of Possible Disciplinary Sanction and Remedies.** After a determination of responsibility as been issued, the ROE may implement recommended disciplinary sanctions, up to and including: (1) discharge, for a Respondent-employee; (2) expulsion, for a Respondent-student; and (3) termination of any existing contracts and/or prohibition from ROE property and activities, for a third-party Respondent. Remedies which may be made available following a determination of responsibility will be designed to restore or preserve equal access to the ROE's education programs and activities. They shall include, but will not be limited to, Supportive Measures.

(9) **Standard of Evidence.** The ROE will base all determinations on the clear **and** convincing evidence standard.

(10) **Right to Appeal.** Complainant and Respondent will have the right to appeal a determination of responsibility, or a determination to dismiss all or part of a Formal Complaint, pursuant to the Appeals Process (outlined below Section III.G).

B. **Notice of Allegations:**

Upon receipt of a Formal Complaint, the Title IX Coordinator will provide written notice to all known parties. This written notice will include:

- Notice of the grievance process, including a description of informal resolution processes available.
- Notice of the allegations of Title IX Sexual Harassment raised in the Formal Complaint, including sufficient details known at the time, such as the identities of the parties, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident. Parties will be given sufficient time to prepare a response prior to undergoing any initial interview.
- A written statement that the Respondent is presumed not responsible for the alleged conduct and that a determination of responsibility will be made at the conclusion of the grievance process.
- Notice that the parties are entitled to, but are not required to, have an advisor of their choice who may be, but is not required to be, an attorney. The advisor will be permitted to inspect and review the evidence collected.
- Provisions of the ROE's Code of Conduct and/or Board Policy which prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, at any point during the investigation, new allegations not listed in the initial written notice are raised about the Complainant or Respondent and the ROE decides they must be investigated, the ROE will provide notice of these additional allegations to all parties whose identities are known.

C. **Dismissing a Formal Complaint:**

The ROE will investigate allegations raised in a Formal Complaint. The ROE must dismiss the Formal Complaint if: (1) the conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment, even if proved; (2) the conduct did not occur in the ROE's education program or activity; or, (3) the conduct did not occur against a person in the United States. Such

a dismissal will not preclude the ROE from taking action under another provision of its Code of Conduct or Board Policy, if applicable.

Additionally, the ROE may dismiss the Formal Complaint or any allegations therein, if, at any time during the investigation: (1) the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; (2) the Respondent is no longer enrolled or employed by the ROE; (3) or specific circumstances prevent the ROE from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon either a required or a permitted dismissal of the Formal Complaint or allegations therein, the ROE will promptly and simultaneously send to the party's written notice of the dismissal and the reason(s) therefore.

D. Consolidating Formal Complaints.

The ROE may consolidate Formal Complaints of allegations of Title IX 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. Where a grievance process involves more than one complainant or more than one respondent, references in this process to the singular "party," "complainant," or "respondent" include the plural, as applicable.

E. Investigating Formal Complaints.

Throughout its investigation, the ROE will ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the ROE and not on the parties. That being said, the ROE cannot 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 ROE obtains that party's or that party's parent's, if applicable, voluntary, written consent to do so. Further, the ROE will 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.

Parties will have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. They will not be restricted from discussing the allegations under investigation or from gathering and presenting relevant evidence on their own.

Further, parties will have 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. Any restrictions placed on the extent to which an advisor will be permitted to participate in the proceedings herein shall apply to all parties equally.

When a party or witness is expected to or invited to participate in a proceeding under this process, they will receive written notice of the date, time, location, participants, and purpose of such, with sufficient time for the party to prepare to participate.

Both parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including any evidence the ROE does not intend to rely on in reaching a determination regarding responsibility, as well as any inculpatory or exculpatory evidence, whether obtained from a party

or other source. This will ensure that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the ROE will 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 will have 10 days/school days to submit a written response, which the investigator will consider prior to completion of the investigative report.

Finally, an investigative report that fairly summarizes the relevant evidence will be sent to each party and the party's advisor, if any, at least 10 days/school days prior to a determination of responsibility being issued, for each party to review and provide a written response to. The investigative report will be provided in an electronic format or a hard copy.

F. Determination Regarding Responsibility.

No sooner than 10 days/school days after the parties have received a copy of the investigative report, the initial decision-maker will reach a determination regarding responsibility. This determination will be made applying the **clear** and convincing evidence standard of evidence. The initial decision-maker will not be the same person as the investigator or the Title IX Coordinator.

Prior to rendering such a determination, the initial decision-maker will afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness. Responses/answers to the written questions will be provided to each party. Each party will then be permitted to submit limited follow-up questions.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior will not be considered 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. In the event any submitted question is excluded as not relevant, the initial decision-maker will provide a written explanation to the party proposing the question outlining why it was determined that such a question was not relevant, and therefore not submitted to the other party or witness.

The written determination of responsibility will include the following pieces of information:

- (1) An identification of the allegations potentially constituting Title IX 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 ROE'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 ROE will impose on the Respondent, and whether remedies designed to restore or preserve equal access to the ROE's education program or activity will be provided to the Complainant; and
- (6) The ROE's procedures and permissible bases for the Complainant and Respondent to appeal.

Each party will receive the written determination simultaneously. The determination of responsibility will become final either on the date the ROE provides the parties with the written determination of the result of the appeal, or, if no appeal is filed, on the date which an appeal would no longer be considered timely.

G. Appeals Process.

Both parties may appeal a determination regarding responsibility or the ROE's decision to dismiss all or part of a Formal Complaint. All appeals must be submitted to the Title IX Coordinator, in writing, within 10 days/school days of receiving the determination of responsibility. The following basis for appeal will be considered:

- (A) A procedural irregularity that affected the outcome of the matter;
- (B) 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
- (C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Upon receipt of an appeal from a party, the District will:

- (A) Notify the other party in writing that an appeal has been filed and that the appeal procedures will be implemented equally for both parties;
- (B) Give both parties **five** (5) days to submit a written statement in support of or challenging the outcome;
- (C) Promptly provide all relative materials for the appeal to the appellate decision-maker; and
- (D) Within **thirty** (30) days of receiving the appeal request, issue a written decision describing the result of the appeal and the rationale for the result and provide the written appellate decision to both parties simultaneously.

The appellate decision-maker will not be the same person as the initial decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator. Further, the ROE will ensure that the appellate decision-maker will not have a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent involved.

H. Informal Resolution Process:

Any time prior to reaching a determination regarding responsibility, the parties may elect to participate in an informal resolution process, in lieu of the Formal Complaint grievance process outlined herein at Section III. Examples of informal resolution processes which may be pursued include, but are not limited to, mediation. These processes do not involve a full investigation and adjudication.

An informal resolution process is available for any incident reported under a process herein, except for incidents where the alleged Title IX Sexual Harassment occurred between an employee and a student. The informal resolution process may be requested and initiated any time prior to a determination regarding responsibility being reached. Both parties must provide voluntary, written consent to initiate the informal resolution process. Consent can be withdrawn by either party at any time prior to an agreement being reached to resolve an allegation. Prior to or in the event no agreement to resolve an allegation is reached during the informal process, the parties may resume the formal resolution process.

Any records collected during this informal resolution process may be maintained as part of the ROE's record-keeping on an allegation of Title IX Sexual Harassment raised pursuant to this Policy.

I. Recordkeeping.

For the period of seven (7) years, the ROE will maintain records of:

- Each sexual harassment investigation including any determination regarding responsibility;
- Any disciplinary sanctions imposed on the Respondent and any remedies provided to the Complainant designed to restore or preserve equal access to the ROE's education program or activity;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom; and
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. These training materials will also be made publicly available on the ROE's website.

Further, the ROE will create and maintain, for seven (7) years, records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Title IX Sexual Harassment. Such records will include:

- Documentation of the basis for the conclusion that the ROE did not act deliberately indifferent following receipt of the report or Formal Complaint;
- Documentation showing the ROE took measures designed to restore or preserve equal access to its education program or activity.
- In the event the ROE did not provide a Complainant with any Supportive Measures, documentation showing the reasons why such a response was not clearly unreasonable in light of the known circumstances.

IV. Violations of Title IX Sexual Harassment:

Any ROE employee determined to have engaged in Title IX Sexual Harassment shall be subject to discipline up to and including discharge. Any third-party determined to have engaged Title IX Sexual Harassment will be addressed in accordance with applicable ROE policies as they relate to the ROE's authority over said party. Students determined to have engaged in Title IX Sexual Harassment shall be subject to appropriate discipline, including, but not limited to suspension or expulsion, consistent with the ROE's student behavior policies. Any person making a false allegation of sexual harassment shall be subject to like discipline. A false allegation of sexual harassment occurs when the person who alleges the sexual harassment knows that the alleged harassing conduct did not occur.

This policy does not increase or diminish the ability of the ROE or the parties to exercise any other rights under existing law.

V. Retaliation Prohibited:

There shall be no retaliation or threat of retaliation by the ROE, an ROE employee or ROE official against anyone for reporting alleged Title IX Sexual Harassment. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of

sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

Reports of retaliation will be handled in accordance with the ROE's Uniform Grievance Procedure. Any person who retaliates against others for reporting or complaining of violations of this Grievance Procedure or for participating in any manner under this Grievance Procedure will be subject to discipline, up to and including discharge or in the case of a student up to suspension or expulsion.

VI. Key Definitions:

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

Dating Violence, for purposes of "Title IX Sexual Harassment," means violence committed by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim, and (2) where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. 34 U.S.C. §12291(a)(10).

Domestic Violence, for purpose of "Title IX Sexual Harassment," includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. 34 U.S.C. §12291(a)(8).

Education program or activity includes locations, events, or circumstances where the ROE has substantial control over both the Respondent and the context in which alleged sexual harassment occurs.

Formal Title IX Sexual Harassment Complaint means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the ROE investigate the allegation.

Respondent means an individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment.

Sexual Assault, for purposes of "Title IX Sexual Harassment," means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. 20 U.S.C. 1092(f)(6)(A)(v).

Stalking, for purposes of "Title IX Sexual Harassment," means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others, or (2) suffer substantial emotional distress. 34 U.S.C. §12291(a)(30).

Supportive measures mean 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 Title IX Sexual Harassment Complaint* or where

no *Formal Title IX Sexual Harassment Complaint* has been filed.

Legal Reference:

20 U.S.C. §1681 et seq., Title IX of the Educational Amendments of 1972
34 C.F.R. Part 106.

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