

Administrative Regulation

AR 5145.7 Students

SEXUAL HARASSMENT

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Prohibited sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex in the educational setting, under any of the following conditions: (Education Code § 212.5; 5 CCR § 4916; 34 CFR § 106.30)

1. An explicit or implicit “quid pro quo” (something for something), such as when:
 - a. Submission to or participation in the conduct is explicitly or implicitly made a term or condition of a District aid, benefit, or service available at or through any District program or activity.
 - b. Submission to or rejection of the conduct by a student is used as the basis for academic decisions affecting the student.
 - c. Submission to or rejection of the conduct by the student is used as the basis for any decision affecting the student regarding benefits and services, honors, programs, or activities available at or through any District program or activity.
2. The conduct is so severe, pervasive, and objectively offensive that it effectively denies a student equal access to the District’s educational program or activity or has the purpose or effect of having a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment.
3. The conduct constitutes “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)(3).

The complaint and grievance procedures described in this Administrative Regulation shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 filed by or against a student, while in an education program or activity in which a District school exercises substantial control over the context and respondent, alleging one or more of the above forms of sexual harassment. (34 CFR §§ 106.30, 106.44)

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

Examples of unwelcome verbal, visual, or physical conduct of a sexual nature include, but are not limited to:

- Unwelcome leering, sexual flirtations, or propositions;
- Unwelcome sexual slurs, epithets, threats, verbal abuse, derogatory comments, or sexually degrading descriptions;
- Graphic verbal comments about an individual's body or overly personal conversation;
- Sexual jokes, derogatory posters, notes, stories, cartoons, drawings, pictures, obscene gestures, or computer-generated images of a sexual nature;

- Spreading sexual rumors;
- Teasing or sexual remarks about students enrolled in a predominantly single-sex class
- Massaging, grabbing, fondling, stroking, or brushing the body;
- Touching an individual's body or clothes in a sexual way;
- Impeding or blocking movements or any physical interference with school activities when directed at an individual on the basis of sex;
- Displaying sexually suggestive objects;
- Sexual assault, sexual battery, or sexual coercion;
- Electronic communications containing comments, words, or images described above.

Reporting Sexual Harassment

A student who believes that they have been subjected to sexual harassment, or witnessed sexual harassment, within any District program or activity is strongly encouraged to report the sexual harassment to the Title IX Coordinator, a teacher, the principal, or any other available school employee. A student's parent or guardian may submit a report of sexual harassment on the student's behalf. Any District employee who receives a report of sexual harassment involving a

student shall forward the report to the District Title IX Coordinator within one school day of receiving such a report.

In addition, any school employee who observes an incident of sexual harassment involving a student shall, within one school day, report his/her observation to the District Title IX Coordinator. The employee shall take these actions, whether or not the alleged victim files a complaint. Employees who fail to do so may be subject to disciplinary action.

Upon receiving a report of sexual harassment, the Title IX Coordinator shall inform the complainant of the right to file a formal written complaint and the process for filing a formal complaint pursuant to this Administrative Regulation. The Title IX Coordinator shall also promptly contact the alleged victim to confidentially discuss the availability of supportive measures, inform them that supportive measures are available with or without filing a formal complaint, and consider their wishes with respect to supportive measures. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of class schedules, campus escort services, mutual restrictions on contact between the parties, leaves of absence, and other similar measures as may be appropriate and reasonably available (34 CFR § 106.44)

If the alleged victim chooses not to file a formal complaint, the Title IX Coordinator shall file a formal complaint on the alleged victim's behalf if the Title IX Coordinator finds that the situation presents a safety threat.

A formal complaint shall be physically or electronically signed by the complainant and delivered to the Title IX Coordinator by mail, email, or personal delivery. (34 CFR § 106.30)

Investigation and Grievance Procedure

Upon receiving a formal complaint pursuant to this regulation, the Title IX Coordinator, designee, or other outside investigator appointed by the District shall:

- Within five days, commence the investigation and notify the complainant and the respondent of the allegations in the complaint.
- Send the complainant and the respondent written notice of any investigative interviews, meetings, or hearings;
- Not restrict either the complainant or respondent from discussing the allegations or gathering relevant evidence;

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- Within 40 days, complete the investigation and provide the complainant and respondent with a copy of the relevant evidence as well as an investigative report that fairly summarizes relevant evidence.

The complainant and respondent shall have 10 days to inspect, review, and respond to the evidence and investigative report. (34 CFR § 106.45)

A neutral decision-maker (who is not the Title IX Coordinator or investigator) shall review the relevant materials and issue a written decision within 60 days of the date of the formal complaint. Before issuing a written decision, the decision-maker shall provide the complainant and respondent the opportunity to: (34 CFR § 106.45)

1. Submit written, relevant questions that they want to ask the other party or a witness who was interviewed for the investigation;
2. Provide answers to the questions asked by the other party; and
3. Ask limited follow-up questions within five days of the investigative report.

The written decision shall include findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and any remedies to be provided to the complainant. A copy of the written decision will be sent to the complainant and respondent simultaneously along with information on how to file an appeal.

If, at any time, the Title IX Coordinator finds that the allegations in a formal complaint do not meet the definition of sexual harassment, did not occur within the District's educational program or activity, or that the respondent is not a person in the United States, the formal complaint will be dismissed for purposes of Title IX.

In addition, the Title IX Coordinator may, at his/her discretion, dismiss a formal complaint or allegations therein at any time if: the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein; the respondent is no longer enrolled or employed by the District; or specific circumstances prevent the District from gathering sufficient evidence to reach a determination (34 CFR § 106.45)

Appeal

Either the complainant or the respondent may appeal the District's written decision or decision to dismiss a formal complaint by submitting a written request to the Title IX Coordinator within 30 days of the written decision. A party may request an appeal for the following reasons only: procedural irregularity that affected the outcome of the matter; there is newly discovered

evidence that could affect the outcome of the matter; and/or Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.

The appeal shall be heard by a different decision-maker (not the same person who issued the decision on appeal). On appeal, the decision-maker shall provide both parties equal opportunity to submit a written statement and shall issue a written decision simultaneously to both parties. (34 CFR § 106.45)

The Title IX Coordinator, investigator, decision-maker, and anyone who facilitates an informal resolution process for a complaint shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent specifically. Such persons shall receive Title IX training in accordance with 34 CFR 106.45.

Confidentiality

All complaints and allegations of sexual harassment shall be kept confidential except as required or permitted by law and as may be necessary to carry out the investigation or take other subsequent necessary action. (5 CCR § 4964)

However, when a complainant or victim of sexual harassment notifies the District of the harassment but requests confidentiality, the compliance officer shall inform him/her that the request may limit the District's ability to investigate the harassment or take other necessary action. When honoring a request for confidentiality, the District will nevertheless take all reasonable steps to investigate and respond to the complaint consistent with the request.

Reference:

BP/AR 1312.3 - Uniform Complaint Procedures
BP 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information
BP/AR 5125 - Student Records
BP 5131 - Conduct
BP 5131.2 - Bullying
BP 5137 - Positive School Climate)
BP/AR 5141.4 - Child Abuse Prevention and Reporting
BP/AR 5145.3 - Nondiscrimination/Harassment
BP/AR 6142.1 - Family Life/Sex Education

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