

SEXUAL HARASSMENT IN THE WORKPLACE

The School District of Independence does not tolerate sexual harassment in any form and will take all necessary and appropriate action to eliminate it, up to and including discipline of offenders. It is the policy of the School District to maintain and insure a working environment free of any form of sexual harassment or intimidation toward and between students, employees, School Board members, volunteers, and applicants. All employees and regular volunteers of the District are required to be familiar with and comply with the policy of the District prohibiting sexual harassment. This policy prohibits any District employee, School Board member, Volunteer or applicant, male or female, from sexually harassing another employee, School Board member, volunteer or applicant.

It is the policy of the District that a sexual relationship between staff and students is not permissible in any form or under any circumstances, in that it interferes with the educational process and involves elements of coercion by reason of the relative status of a staff member to a student.

Sexual relationships between staff members, where one staff member has supervisory responsibilities over the other, are discouraged as a matter of policy. Such relationships have an inherent possibility of being construed as sexual harassment because the consensual aspect of the relationship may be a result of implicit or explicit duress caused by the uncertainty regarding the consequences of non-compliance.

As defined in section 106.30(a) of the Title IX regulations, "sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the district conditioning the provision of an aid, benefit, or \ service of the school district on an individual's participation in unwelcome sexual conduct (*quid pro quo*);
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 district's education program or activity; or
3. Any of the following, as defined under the Title IX regulations by reference to other federal statutes:
 - a. "sexual assault," as defined in 20 U.S.C. 1092(f)(6)(A)(v),
 - b. "dating violence," as defined in 34 U.S.C. 12291(a)(10),
 - c. "domestic violence," as defined in 34 U.S.C. 12291(a)(8), or
 - d. "stalking," as defined in 34 U.S.C. 12291(a)(30).

Employees who engage in sexual harassment are subject to disciplinary action, up to and including termination. Board members who engage in sexual harassment are subject to Board action. Volunteers who engage in sexual harassment will be removed from volunteering. Any applicant who engages in sexual harassment will be disqualified from employment.

Any employee, Board member, volunteer or applicant who believe they are victims of sexual harassment should report their concerns to the Superintendent or designee as identified in the complaint procedure. It is the intent of the District to create an atmosphere where complaints and alleged complaints will be treated fairly and quickly.

If an individual is not comfortable with making a complaint to the Superintendent or designee, the complaint may be filed with any other administrator. The administrator will report the complaint to the Superintendent or designee.

The Superintendent shall establish a written procedure for responding to complaints. Said procedure shall include a means for the individual to appeal decisions to the Superintendent and to the School Board.

This policy and the complaint procedure will be made available to all employees on not less than an annual basis. The Superintendent shall cause to be posted in each workplace information advising employees of this policy and the complaint procedures.

Filing a Formal Complaint of Title IX Sexual Harassment

An individual who is alleged to be the victim of conduct that could constitute sexual harassment under the federal Title IX regulations (i.e., a Title IX “complainant”), or a parent or guardian who has a legal right to act on behalf of such an individual, may file a “formal complaint” of “sexual harassment,” as those terms are defined in 34 C.F.R. §106.30. No Title IX complainant is obligated to file a formal complaint, but a qualifying formal complaint is necessary for the District to start an investigation of Title IX sexual harassment allegations using the District’s formal Title IX grievance process. Even in the absence of a formal complaint that initiates the formal grievance process, the District still has legal obligations to respond to allegations of Title IX sexual harassment whenever the District has sufficient notice of the allegations (i.e., from any source).

All of the following apply to a formal complaint of Title IX sexual harassment:

1. At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in the education program or activity of the District (including through employment).
2. The formal complaint must be in the form of a document (See Appendix E) or an electronic submission (e.g., an electronic mail message or a file attached to an email) that:
 - a. Alleges sexual harassment against a respondent (if the identity of the respondent is not known, it is not necessary to identify the respondent by name);
 - b. Requests that the District investigate the allegation(s) of sexual harassment; **and**
 - c. Contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

3. The formal complaint must be filed with a District Title IX Coordinator by submitting the document or electronic submission in person, by mail, or by electronic mail, using the District-designated contact information for the Coordinator. When a formal complaint is not filed in person, complainants are strongly encouraged to contact the District to confirm that their complaint was actually received as intended.

If a complainant files a formal complaint of Title IX sexual harassment, or if a Title IX Coordinator signs such a formal complaint on behalf of the District, then:

1. The formal complaint must be resolved according to the federal regulations and District processes that specifically apply to such formal complaints (see Appendix A); and
2. Unless otherwise directed by the School Board or this policy, the District Administrator or his/her administrative-level designee is expected to designate and assign qualified individuals to perform the roles that are defined for District agents within the District's grievance process for formal complaints of Title IX sexual harassment. In addition:
 - a. The District Administrator may assign one or more of the roles to a qualified individual who is not an employee of the District, including an outside attorney or other contracted service provider.
 - b. The Title IX Coordinator and the District Administrator shall ensure that the individual(s) assigned to perform such roles have completed any training required by the federal Title IX regulations.
 - c. If the District determines that a person assigned to such a role is unavailable, disqualified by a conflict of interest or bias, or otherwise unable to perform the responsibilities of the role, the administration shall assign another qualified individual to perform the role.
 - d. The Board or a person designated by the Board shall assign such roles with respect to any formal complaint in which the District Administrator is alleged to be the perpetrator of conduct that could constitute Title IX sexual harassment. The Title IX Coordinator and the District Administrator shall inform the Board of any such need to assign the roles.

Filing a formal complaint of Title IX sexual harassment is one way to report such

harassment. However, if a Title IX complainant or other person is not eligible to file a qualifying formal complaint, or if they choose not to do so, the person may still submit a report of the allegations to the District as further described above within this policy (i.e., a report that is **not** a formal complaint for purposes of Title IX). Moreover, **any** report of conduct that could constitute sexual harassment under Title IX that causes the District to have actual knowledge of the relevant conduct/allegations requires an appropriate response by the District, even if the reporting procedures defined in this policy were not followed and even if no formal complaint has been or ever is filed.

First Reading July 26, 1993

Approved by Board Action August 23, 1993

Reaffirmed annually January 24, 1994 through January 4, 2012

Revised and Approved by Board Action, January 13, 2021

Responding to a Formal Complaint of Sexual Harrassment

Step 1: Screening of a Formal Complaint

Before beginning a grievance process, or even during the grievance process, the Title IX coordinator and other agents of the District must consider whether there is a basis for the dismissal of the complaint or any of the specific allegations.

There are two ways a formal complaint could be dismissed.

Mandatory Dismissal: The District must dismiss a formal complaint if the conduct alleged in the complaint:

- A. Would not constitute sexual harassment as defined under Title IX even if proved;
- B. Did not occur within the District's education program or activity; or
- C. Did not occur against a person in the United States.

Permissive Dismissal: The District may dismiss if:

- A. The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- B. The respondent is no longer enrolled or employed by the District; or
- C. Specific circumstances prevent the District from gathering evidence sufficient to reach a determination.

If dismissed, the District must promptly send written notice of the dismissal and reasons for dismissal. (See Appendix F)

Dismissal decisions are appealable (See Appendix D)

If the formal complaint is not dismissed upon receipt, the Title IX Coordinator must initiate the grievance process (Steps 2 - 4). If the formal complaint is dismissed, only a successful appeal may initiate the grievance process.

Step 2: The Investigation

Upon receipt of a formal complaint, the District Administrator will assign the role of Investigator to a trained individual. The Investigator may be the Title IX coordinator. The Investigator must not have a conflict of interest or a bias for or against complainants or respondents generally or an individual complainant or respondent.

The steps in the investigation are as follows:

- A. Initial Notice to all Parties (Appendix G)
- B. Within 10 days of the date of Notice, contact all parties requesting an interview or evidence relevant to the complaint. If more time is required, the amount of time needed will be set and communicated to all parties. All parties will have the same opportunity to have others present during any complaint proceeding, including the opportunity to be accompanied by the advisor of their choice, who may be, but is not required to be, an attorney. The District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
- C. Conduct interviews and gather evidence relevant to the complaint within 30 working days of the date of Notice, unless more time has been mutually agreed upon and communicated to all parties involved.
- D. Before completion of the investigative report, send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or hard copy. The parties shall have at least ten (10) working days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- E. Create an investigative report that fairly summarizes relevant evidence and, at least ten (10) working days prior to the time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or hard copy, for their review and written response.
- F. The investigative report will also be sent to the Decision-Maker at the same time it is sent to each party.

Step 3: Decision Making

Upon receipt of a formal complaint, the District Administrator will assign the role of Decision Maker to a trained individual. The Decision Maker may **not** be the Title IX coordinator or Investigator. The Decision Maker must not have a conflict of interest or a bias for or against complainants or respondents generally or an individual complainant or respondent.

The steps in the decision making process are as follows:

- A. After receipt of the investigative report, set a date for reaching a determination of responsibility, to be no less than 10 days after receipt of the investigative report. This date may be adjusted, if needed, to review written responses and questions from the parties regarding the investigative report or to administer the procedures as indicated in 'B'..
- B. Afford each party the opportunity to submit written, relevant questions that a party wants asked or any party or witness and provide each party with the answers. Time must also be allowed to allow for additional limited follow up questions from each party. The decision maker must explain to any party proposing questions any decision to exclude questions as not relevant.
- C. The decision maker will make a determination whether the respondent was responsible for sexual harassment based on the preponderance of evidence.
- D. A written determination will be given to all parties and must include:
 - a. Identification of the allegations potentially constituting sexual harassment;
 - b. 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;
 - c. Findings of fact supporting the determination;
 - d. Conclusions regarding the application of the District's code of conduct to the facts;
 - e. 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 District to the complainant; and
 - f. The District's procedures and permissible bases for the complainant and respondent to appeal (See Appendix D), including (when applicable) notice of the right of a student complainant to appeal a final determination to the State Superintendent of Public Instruction and notice of the procedures for making that non-Title IX appeal.

Step 4: Appeal (Not a required step)

The District shall offer both parties an appeal from a determination regarding responsibility or from a dismissal of a formal complaint. The District Administrator will assign the role of Appeal Decision Maker to a trained individual. The Appeal Decision Maker may **not** be the Title IX coordinator, Investigator, or Decision-Maker. An appeal must be filed within ten (10) working days of receipt of the written determination of the Decision-Maker and may be based upon any of the following:

1. A procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter; and,
3. 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.

The District must also:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the appeal decision-maker complies with the standards set forth in 34 C.F.R. § 106.45(b)(1)(iii);
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
4. Issue a written decision describing the result of the appeal and the rationale for the result, which shall be issued within any timeline specified in the local Title IX grievance process, unless the appeal decision-maker notifies the parties that additional time is needed; and
5. Provide the written decision on appeal simultaneously to both parties.

If the Appeal Decision Maker determines one of the above grounds for appeal is satisfied, the Appeal Decision Maker may:

1. Adjust the determination directly; or
2. Return for further review of the investigative report by a new decision-maker, if the error or other basis for granting the appeal related only to the decision making step; or
3. If the grounds for appeal relate to the investigation, or warrant additional investigation, the Appeal Decision-Maker may either re-open the record or refer the matter for further investigation before proceeding.

To the extent required by the Title IX regulations, disciplinary sanctions for Title IX sexual harassment and any remedies that could not be offered as supportive measure shall not be enforced until the determination of the complaint becomes final. The determination regarding responsibility becomes final either:

1. If no appeal is filed, on the date on which an appeal would no longer be considered timely; or
2. If an appeal is filed, on the date that the district provides the parties with the written determination of the result of the appeal.

FORMAL COMPLAINT OF SEXUAL HARASSMENT

This formal complaint is filed by the complainant (or parent or guardian on behalf of the complainant) or signed by the Title IX Coordinator.

If this formal complaint is filed by the complainant, it may be filed with the Title IX Coordinator in person, by mail, by electronic mail, by using the contact information for the Title IX Coordinator, or by any additional method designated by the District. A document filed by a complainant means a document or electronic submission that contains the complainants physical or digital signature or otherwise indicates that the complainant, or a parent or guardian acting on behalf of a complainant, is the person filing the formal complaint.

This formal complaint is intended to request the District to investigate the allegation of sexual harassment.

This formal complaint must either attach or include below the specific allegations of sexual harassment against a respondent about conduct within the District’s education program or activity.

The allegations of sexual harassment are as follows:

The conduct occurred within the District’s education program or activity in the following respect:

A respondent is any individual who is reported as the alleged perpetrator of conduct that could constitute sexual harassment. The respondent(s) related to the conduct alleged above (if known) are the following individuals:

Printed Name of Complainant or Title IX Coordinator

Date

Signature of Complainant or Title IX Coordinator

Notice of Mandatory Dismissal of Formal Complaint of Sexual Harassment

[DATE]
[NAME]
[ADDRESS]

RE: Notice of Dismissal of Formal Complaint of Sexual Harassment

Dear [NAME]:

The District has reviewed the allegations in a formal complaint of sexual harassment that was either filed by a complainant or signed by the Title IX Coordinator.

Upon review, I have concluded that the formal complaint must be dismissed. It must be dismissed because *[Choose one: (1) the conduct alleged in the formal complaint, even if proven, would not constitute sexual harassment as defined under the federal law known as "Title IX"; (2) the conduct did not occur within the education program or activity of the District; or (3) the conduct did not occur against a person in the United States].*

[Further explain the reason(s) for dismissal.]

Because dismissal is required under Title IX, I am sending this written notice of dismissal simultaneously to the relevant parties. Dismissal for purposes of Title IX does not preclude the District from taking further action related to the alleged conduct if doing so is determined to be appropriate under any of the District's nondiscrimination policies or other District policies or rules.

This dismissal decision may be appealed to the extent provided in the District's grievance process for formal complaints of Title IX sexual harassment.

Sincerely,

Title IX Coordinator
School District of Independence

Notice of Discretionary Dismissal of Formal Complaint of Sexual Harassment

[DATE]
[NAME]
[ADDRESS]

RE: Notice of Dismissal of Formal Complaint of Sexual Harassment

Dear [NAME]:

The District has reviewed the allegations in a formal complaint of sexual harassment that was either filed by a complainant or signed by the Title IX Coordinator.

Upon review, I have concluded that the formal complaint should be dismissed. It is being dismissed because ***[Choose one: (1) the complainant has notified the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint; (2) the respondent is no longer enrolled in or employed by the District; or (3) specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint].***

[Further explain the reason(s) for dismissal.]

This notice of dismissal is being sent simultaneously to the relevant parties. Dismissal for purposes of Title IX does not preclude the District from taking further action related to the alleged conduct if doing so is determined to be appropriate under any of the District's nondiscrimination policies or other District policies or rules.

This dismissal decision may be appealed to the extent provided in the District's grievance process for formal complaints of Title IX sexual harassment.

Sincerely,

Title IX Coordinator
Independence School District

NOTICE OF A FORMAL COMPLAINT OF TITLE IX SEXUAL HARASSMENT

[DATE]

[NAME]

[ADDRESS]

RE: Notice of a Formal Complaint of Sexual Harassment

Dear [NAME]:

This notice is intended to inform you that a formal complaint alleging sexual harassment under Title IX has been filed by a complainant or signed by the Title IX Coordinator with the District. You are being provided this notice because you are a party to this formal complaint.

Enclosed please find a copy of the District's sexual harassment policy 512, including the District's Title IX grievance process for this formal complaint and the District's informal resolution process (Policy 870). Please be informed 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. Please also be aware that the parties may request to inspect and review evidence that is directly related to the allegations raised in the formal complaint.

The parties may have an advisor of their choice, who may be, but is not required to be, an attorney. Please also be aware that, as provided in *[identify the relevant policy or code of conduct provision that establishes the rule]*, the District prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

Please be advised of the following allegations that potentially constitute sexual harassment: *[Include a description of the allegations, including sufficient details known at the time. Sufficient details include the identities of the parties involved in the incident(s), if known; the conduct allegedly constituting sexual harassment under §106.30; and the date and location of the alleged incident(s), if known.]*

At the District's discretion, conduct that is investigated using the District's grievance process for allegations of Title IX sexual harassment may be assessed under all relevant legal standards and all applicable District policies, rules, and codes of conduct.

If, during the investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the notice, the District will provide notice of the additional allegations to you. This notice is being provided to the parties with sufficient time to prepare a response before any initial interview. The District will contact you for an interview or request for evidence within 10 calendar days of the date of this letter.

Sincerely,

Title IX Coordinator

Independence School District

Enclosure: Sexual Harassment Policy 512, Policy 870