

<p>3.0150 EMPLOYMENT OBJECTIVES: SEXUAL HARASSMENT</p> <p>3.0150.01</p> <p><i>GENERAL STATEMENT OF POLICY</i></p> <p><i>Issue Date: 5/9/96 Updated: 11/14/19</i></p> <p>Sexual harassment is a form of sex discrimination which violates Section 703 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. and § 34A-5-101 et seq. of the Utah Antidiscrimination Act.</p> <p>It is the policy of the District to maintain a learning and working environment that is free from sexual harassment. Sexual harassment is inappropriate in the District and will not be tolerated by the Board in matters over which it has jurisdiction. Sexual harassment, by the Board member, District administrators, Administrators, certified/support personnel, or students, is prohibited.</p> <p>3.0150.02</p> <p>The District will act to investigate all complaints, formal or informal, verbal or written, of sexual harassment and to discipline any student or employee who sexually harasses a student or employee of the District.</p> <p><i>42 U.S.C. § 2000e et seq. Utah Code Ann. § 34A-5-101 et seq.</i></p> <p>Persons found in violation of this policy will be subject to discipline, including, but not limited to reprimand, probation, demotion, suspension or termination, or other sanctions as may be determined to be appropriate by the Board.</p> <p><i>SEXUAL HARASSMENT DEFINED</i></p> <p><i>Issue Date: 5/9/96 Updated: 11/14/19</i></p> <p>Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical communication of a sexual nature when: Any form of advances, request for sexual favors and other verbal or physical</p>	<p>DKB</p> <p>Sexual Harassment</p> <p>General Statement of Policy—</p> <p>Sexual harassment is a form of sex discrimination which violates Section 703 of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), and the Utah Antidiscrimination Act, Utah Code § 34A-5-101 et seq.</p> <p>It is the policy of the District to maintain a learning and working environment that is free from sexual harassment. The District prohibits any form of sexual harassment. The Board of Education does not discriminate on the basis of sex in its programs and activities and is required by Title IX and 34 CFR Part 106 not to discriminate on the basis of sex, including but not limited to such discrimination in admission and employment. The Board adopts this policy in order to meet its obligations under Title IX to provide appropriate treatment of and response to complaints or reports of sexual harassment and to seek to provide a learning environment free from sexual harassment and discrimination on the basis of sex. Therefore, the District will promptly respond to notice of sexual harassment or allegations of sexual harassment and take appropriate action.</p> <p>The definitions of sexual harassment under Title VII and Title IX differ, although there are areas of overlap. This policy therefore distinguishes between sexual harassment as to employment (Title VII) and sexual harassment as to participation in District programs and activities (Title IX). The intent of this policy is to meet the District’s obligations under both Title VII (and the Utah Antidiscrimination Act) and Title IX.</p> <p>This policy addresses sex discrimination in the form of sexual harassment by employees and against employees. Policy FHAB addresses sex discrimination in the form of sexual harassment against students. Other forms of sex discrimination are addressed in Policy DAA and Policy FA. It is a violation of this policy for any employee of the District to sexually harass a student or an employee.</p> <p>The District encourages all victims of sexual harassment and persons with knowledge of sexual harassment to immediately report that to the Title IX Coordinator or an administrator. Employees with knowledge of sexual harassment or possible sexual harassment are required to report that information to their supervisor and/or the Title IX Coordinator. (Failure to make such reports may result in disciplinary</p>
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conduct of a sexual nature is unacceptable when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of retaining or obtaining employment, or obtaining an education, grade, or academic performance;
2. Submission to or rejection of such conduct or communication by any individual is used as a favor in decisions affecting that individual's employment decisions or as the basis for a grade.
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working or academic environment.

Any sexual harassment as defined when perpetrated on any student or employee by any student or employee will be treated as sexual harassment under this policy.

Sexual harassment may include but is not limited to:

1. Verbal harassment or abuse;
2. Subtle pressure for sexual activity;
3. Inappropriate patting or pinching;
4. Intentional brushing against a student's or employee's body;
5. Demanding sexual favors accompanied by implied or overt promises of preferential treatment with regards to an individual's employment or educational status;
6. Any unwelcome sexually motivated touching.

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REPORTING PROCEDURES

Issue Date: 5/9/96 Updated: 11/14/19

Meritor Saving Bank v. Vinson, 477 U.S. 57 (1986) Baker v. Weyerhaeuser Co. 903 F 2d 1342 (10th Cir. 1990)

action according to District policy.) All complainants have the right to be free from retaliation of any kind.

Notice of this policy shall be given to all applicants for employment and employees and shall be included in employee handbooks. Questions about rights under Title IX and about the application of Title IX to the District can be directed to the Title IX Coordinator identified in this policy or to the Assistant Secretary for Civil Rights of the U.S. Department of Education, or both.

The District will act to investigate all complaints, formal or informal, verbal or written, of sexual harassment and when appropriate to discipline any employee or student who sexually harasses an employee or student of the District.

[42 U.S.C. § 2000e et seq.](#)

[Utah Code § 34A-5-101 et seq.](#)

34 CFR § 106.8(b)(1)

34 CFR § 106.45(a)

No Expansion or Reduction of Other Legal Rights—

Nothing in this policy shall be construed to give any right, claim or action beyond the specific process provided in this policy. Nothing in this policy restricts rights which may be available under other District policies or under applicable laws or regulations.

Prohibition of False Statements—

Employees and students are prohibited from knowingly making false statements or knowingly submitting false information in connection with allegations of sexual harassment or a sexual harassment investigation or a sexual harassment grievance procedure. Any employee or student doing so is subject to disciplinary action.

Confidentiality—

Except to the extent required to carry out a required response to sexual harassment under this policy or other forms of sex discrimination under other policies, or as required by law, the District shall keep confidential the identity of (a) any individual who reports or complains of sexual harassment or other types of sex discrimination (including filing a formal complaint), (b) any respondent or other individual reported to have perpetrated another form of sex discrimination, and (c) any witness regarding sexual harassment or other form of sex discrimination. Except to the extent that maintaining confidentiality would impair the District's ability to provide supportive measures, the District shall keep confidential any supportive measures provided to a complainant,

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Any employee or student who believe/s that they he/or she has been the victim of sexual harassment by a student or employee of the District, or any third person with knowledge or belief of conduct which may constitute sexual harassment should submit a written report of the alleged act immediately to the Superintendent or one of the Complaint Officers. One male and one female complaint officer must be available. The District encourages the reporting party or complainant to use the report form available from each building principal or from the District office.

The District and the Board have no way of knowing the possible occurrences of sexual harassment within the District unless employees and students willingly come forward with complaints.

1. In each school building: The building principal is the person responsible for receiving oral or written reports of sexual harassment at the building level. If the complaint involves the building principal, the complaint shall be filed directly with the Superintendent, or one of the Complaint Officers.
2. Upon receipt of a report the principal must notify the Superintendent or one of the Complaint Officers immediately without screening or investigating the report.
 1. A written report will be forwarded simultaneously to the District Human Rights Officer.
 2. If the report was given verbally, the principal shall reduce it to written form within twenty-four (24) hours and forward it to the Superintendent or one of the Complaint Officers.
3. Failure to forward any sexual harassment report or complaint as provided herein will result in disciplinary action.
4. District wide: The Board hereby designates the Superintendent as the District Human Rights Officer.

respondent, or employee complaining of employment sexual harassment. (In appropriately responding to sexual harassment, the District may need to disclose the identity of individuals for purposes of an appropriate investigation and following the grievance process or for purposes of appropriate supportive measures.)

Disclosure is also allowed to the extent permitted by FERPA and its implementing regulations.

[34 CFR § 106.71\(a\)](#)

[34 CFR § 106.30\(a\)](#)

Where a complaint involves allegations of child abuse, the complaint shall be immediately reported to appropriate authorities and the confidentiality of the information will be maintained as required by [Utah Code § 62A-4a-412](#). (See Policy DDA.)

[Utah Code § 62A-4a-403 \(2018\)](#)

[Utah Code § 62A-4a-412 \(2020\)](#)

Employment Sexual Harassment Defined—

For purposes of employment, sexual harassment consists of unwelcome sexual advances, requests for sexual favors, physical or verbal conduct or communications of a sexual nature, and any other gender-based harassment, whether initiated by school employees, students, or visitors when:

1. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining or retaining employment; or
2. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment; or
3. That conduct or communication has the purpose or effect of unreasonably interfering with an individual's employment, or creating an intimidating, hostile or offensive working environment.

[29 CFR § 1604.11\(a\)](#)

As long as one or more of the above-listed factors is met, sexual harassment may include but is not limited to:

1. Verbal harassment or abuse, including any offensive communication that is sexually degrading or implies sexual motives or intentions, such as sexual remarks or innuendoes about an individual's clothing, appearance or activities; sexual gestures;
2. Subtle pressure for sexual activity including sexual invitations or requests for sexual

The Complaint Officer is the Human Resource Director.

The District shall conspicuously post the name of the Human Rights Officer and the Complaint Officers in each school building. Addresses and phone numbers of each Officer will be included.

1. These individuals are authorized to receive reports of complaints of sexual harassment from any individual, employee or victim of sexual harassment and also from the building principals as outlined above.
2. If the complaint involves the Human Rights Officer, or one of the Complaint Officers, the complaint shall be filed directly with the Superintendent.
3. Submission of a complaint or report of sexual harassment will not affect the individual's future employment, grades, or work assignments.
4. Use of formal reporting form is not mandatory.

CONFIDENTIALITY

Issue Date: 03/10/16 Updated: 11/14/19

It is District policy to respect the privacy and anonymity of all parties and witnesses to complaints brought under this policy. However, because an individual's right to confidentiality must be balanced with the District's obligations to cooperate with police investigations or legal proceedings, or to investigate and take necessary action to resolve a complaint, the District retains

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the right to disclose the identity of parties and witnesses to complaints in appropriate circumstances.

Where a complaint involves allegations of child abuse, the complaint shall be immediately reported to appropriate law enforcement authorities and the anonymity of both the complainant and school officials involved in the investigation will be strictly protected as required by Utah Code § 62A-4a-412.

activity in exchange for preferences, favors, selection for [work assignments](#), etc.;

3. Physical contact or closeness that is sexually suggestive, sexually degrading, or sexually intimidating such as the unwelcome touching of another's body parts, spanking, pinching, stalking, frontal-body hugs, intentional brushing against an employee's body; etc.
4. Demanding sexual favors accompanied by implied or overt threats concerning an individual's employment status;
5. Demanding sexual favors accompanied by implied or overt promises of preferential treatment with regard to an individual's employment; or any unwelcome sexually motivated touching;
6. Unwelcome gestures that are sexually suggestive, sexually degrading or imply sexual motives or intentions;
7. Written or pictorial display or distribution of pornographic or other sexually explicit materials such as magazines, videos, films, etc.

Mentor Savings Bank v. Vinson, 477 U.S. 57 (1986)

Baker v. Weyerhaeuser Co., 903 F.2d 1342 (10th Cir. 1990)

Employment Reporting Procedures—

Any [employee](#) who believes he or she has been the victim of sexual harassment by an [employee](#), student or [visitor](#) of the District, or any third person with knowledge or belief of conduct which may constitute [employment](#) sexual harassment should submit a written report of the alleged acts immediately to an appropriate District official as designated by this policy. The District encourages the reporting party or complainant to use the report form available from the principal of each building or available from the District office. [If the conduct in question meets the definition of sexual harassment in education programs \(set out below\), the process and procedures for such harassment \(below\) should also be followed.](#)

1. In Each School Building. The building principal is the person responsible for receiving oral or written reports of [employment](#) sexual harassment at the building level. Upon receipt of a report, the principal must notify the District [Title IX Coordinator](#) immediately without screening or

INVESTIGATION AND RECOMMENDATION

Issue Date: 5/9/96 Updated: 11/14/19

After a reasonable investigation of the complaint, conducted by the Complaint Officer(s) or the Superintendent, a confidential written report of the status of the investigation will be submitted within ten (10) working days to the Superintendent and the Human Rights Officer.

In determining whether alleged conduct constitutes sexual harassment, the District should consider the surrounding circumstances, the nature of the sexual advances, relationships between the parties involved and the context in which the alleged incident(s) occurred. The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstance(s) giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator.

In addition, the District may take immediate steps, at its discretion, to protect the complainant, students and employees pending completion of an investigation of alleged sexual harassment.

The Complaint Officer(s) shall make a written report to the Superintendent upon completion of the investigation.

DISTRICT ACTION

Issue Date: 5/9/96 Updated: 11/14/19

The Superintendent shall handle complaints reported to the Superintendent in a timely, confidential manner. Information regarding an investigation of sexual harassment shall be confidential. Those who are involved in the investigation shall not discuss information regarding the complaint outside the investigation process.

It shall be the responsibility of the Superintendent and/or the complaint Officer(s) to promptly investigate claims of sexual

investigating the report. A written report will be forwarded simultaneously to the [Title IX Coordinator](#). If the report was given verbally, the principal shall reduce it to written form within 24 hours and forward it to the [Title IX Coordinator](#). Failure to forward any sexual harassment report or complaint as provided herein will result in disciplinary action. If the complaint involves the building principal, the complaint shall be filed directly with the [Title IX Coordinator](#).

2. District-Wide. The School Board hereby designates the [Title IX Coordinator \(identified below\)](#) as the [individual](#) to receive reports or complaints of [employment](#) sexual harassment from any individual, employee or victim of [employment](#) sexual harassment and also from the building principals as outlined above. If the complaint involves the [Title IX Coordinator](#), the complaint shall be filed directly with the Superintendent. [Contact information for the Title IX Coordinator shall be disseminated as provided for below.](#)
3. Submission of a complaint or report of sexual harassment will not affect the individual's future employment or work assignments.
4. Use of formal reporting forms is not mandatory.

Employment Investigation and Recommendation—

By authority of the District, the [Title IX Coordinator](#), upon receipt of a report or complaint alleging sexual harassment [in employment](#), shall immediately authorize an investigation. This investigation may be conducted by District officials or by a third party designated by the District. The investigating party shall provide a written report of the status of the investigation within ten (10) working days to the Superintendent of Schools and the [Title IX Coordinator](#).

In determining whether alleged conduct constitutes sexual harassment, the District should consider the surrounding circumstances, the nature of the sexual advances, relationships between the parties involved and the context in which the alleged incidents occurred.

The investigation may consist of personal interviews with the complainant, the individuals against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator.

harassment using the procedures recommended by RISK MANAGEMENT.

1. Upon receiving the complaint, the Superintendent or the Complaint Officers shall confer with the person making the complaint, to obtain an understanding of the statement of the facts from the person.
2. Once the Superintendent or the Complaint Officer(s) has/have obtained a statement of the facts from the person filing the complaint, the Superintendent shall attempt to meet with the person charged with sexual harassment to obtain a response to the complaint unless such a meeting would compromise the confidentiality of the complaint with the charged person.
3. Upon completion of the investigation, the Superintendent shall make a written recommendation to the Board.

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4. It shall be the responsibility of the Superintendent, who may consider consultation with Risk Management, to determine what further action should be taken.
5. If termination or expulsion is determined by the Superintendent to be necessary, the Superintendent shall make such that recommendation to the Board. The District will report the result of the investigation of each complaint filed under these procedures in writing to the complainant. The report will document any disciplinary action taken as a result of the complaint.

PERSONNEL RESPONSIBILITY Issue Date: 11/14/19

It shall be the responsibility of the Board administrators, certificated and support personnel, and others employed by the District to act appropriately under this policy. It shall be the responsibility of the Superintendent to

In addition, the District may take immediate steps, at its discretion, to protect the complainant, students and employees pending completion of an investigation of alleged sexual harassment. [Those steps must be in the nature of supportive measures as defined for purposes of sexual harassment in education programs \(below\) and may not include disciplinary or punitive measures which burden an individual accused of sexual harassment prior to a determination that the person has engaged in sexual harassment. However, an individual may be removed on an emergency basis as provided below regarding sexual harassment in education programs and an employee may be placed on administrative leave during the pendency of a grievance proceeding consistent with District leave relating to possible employment action.](#)

[34 CFR § 106.30\(a\)](#)

[34 CFR § 106.44\(a\)](#)

The Title IX Coordinator shall make a report to the Superintendent upon completion of the investigation.

Employment District Action—

Upon receipt of a recommendation that the complaint is valid, the District will take such action as appropriate based on the results of the investigation.

The result of the investigation of each complaint filed under these procedures will be reported in writing to the complainant by the District. The report will document any disciplinary action taken as a result of the complaint.

Support for Victims of Employment Harassment—

[Pending the outcome of the investigation into a claim of employment sexual harassment, the Title IX Coordinator shall provide support as appropriate to the complaining employee and the accused person. Such support may include supportive measures as defined below for sexual harassment in education programs.](#) When it is determined that an individual has been subject to [employment](#) sexual harassment, consideration should be given to what support, counseling, or other assistance the individual may need to prevent such mistreatment from adversely affecting the individual's ability to function in the [employment](#) setting.

Reprisal—

The District will discipline any individual who retaliates against any person who reports alleged [employment](#) sexual harassment or who retaliates against any person who testifies, assists, or participates in an investigation, proceeding, or hearing relating to an [employment](#) sexual harassment complaint. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or harassment.

inform and educate School District personnel about sexual harassment.

The Board may also designate one person responsible for investigating the complaint, another for determining the validity of the complaint, and a third for determining the penalty if the complaint is found valid. However, it should be kept in mind that the more persons involved in a complaint, the more likely investigations will be prolonged and the level of confidentiality reduced.

REPRISAL

Issue Date: 5/9/96 Updated: 11/14/19

The District will discipline any individual who retaliates against any person who reports alleged sexual harassment or who retaliates against any person who testifies, assists or participates in an investigation, proceeding or hearing relating to a sexual harassment complaint. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment.

NON-HARASSMENT

Issue Date: 5/9/96 Updated: 11/14/19

The District recognizes that not every advance or consent of a sexual nature constitutes harassment. Whether a particular action or incident is a personal, social relationship, without a discriminatory employment effect, requires a determination based on all the facts and surrounding circumstances. False accusations of sexual harassment can have a serious detrimental effect on innocent parties.

RIGHT TO ALTERNATIVE COMPLAINT PROCEDURES

Issue Date: 5/9/96 Updated: 11/14/19

These procedures do not deny the right of any individuals to pursue other avenues of recourse which may include filing charges with the Utah Anti-Discrimination and Labor Division (UALD) 10 East 300 South, SLC 84111 phone: (801) 530-6801, initiating civil action or

Non-Harassment—

The District recognizes that not every advance or consent of a sexual nature constitutes employment harassment. Whether a particular action or incident is a personal, social relationship without a discriminatory employment effect requires a determination based on all the facts and surrounding circumstances. False accusations of sexual harassment can have a serious detrimental effect on innocent parties.

Right to Alternative Complaint Procedures—

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the Division of Antidiscrimination and Labor, initiating civil action or seeking redress under state criminal statutes and/or federal law.

Discipline—

Any District action taken pursuant to this policy will be consistent with requirements of applicable Utah statutes and District policies. The District will take such disciplinary action it deems necessary and appropriate, including warning, suspension or immediate termination to end employment sexual harassment and prevent its recurrence.

Report of Sexual Harassment—

This form shall be maintained as confidential by the District within the limitations outlined in policy. (See Policy Exhibit #1)

Education Program Sexual Harassment Definitions—

1. "Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to any employee of the District.
2. "Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
3. "Formal 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 District investigate the allegation of sexual harassment. (The complainant must be participating or attempting to participate in a District program or activity at the time of filing.) Although the Title IX Coordinator may sign a formal complaint, the Title IX Coordinator does not thereby become the complainant or a party to the grievance proceeding.

<p>seeking redress under state criminal statutes and/or federal law.</p> <p>3.0150.08</p> <p>3.0150.09</p> <p>3.0150.10</p> <p>3.0150.11</p> <p>3.0150.12</p> <p>3.0150.13</p> <p><i>SEXUAL HARASSMENT AS SEXUAL ABUSE</i></p> <p><i>Issue Date: 3/10/16 Updated: 11/14/19</i></p> <p>Under certain circumstances, sexual harassment may constitute sexual abuse and require reporting to appropriate authorities. In such cases, the provisions of Policy 3.0700.15 governing reporting of abuse should be followed.</p> <p><i>DISCIPLINE</i></p> <p><i>Issue Date: 5/9/96 Updated: 11/14/19</i></p> <p>Any school district action pursuant to this policy will be consistent with requirements of applicable Utah statutes and District policies. The District will take such disciplinary action it deems necessary and appropriate, including warning, suspension or immediate termination to end sexual harassment and prevent its reoccurrence.</p> <p><i>NOTICE</i></p> <p><i>Issue Date: 5/9/96 Updated: 11/14/19</i></p> <p>Notice of this policy shall be communicated to all employees and students.</p> <p>5.0812</p> <p>5.0812.01</p>	<p>4. A “program or activity” of the District includes all locations, events, or circumstances over which the District exercised substantial control over both the respondent and the context in which the sexual harassment occurs</p> <p>5. “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.</p> <p>6. “Sexual Harassment” means conduct on the basis of sex that satisfies one or more of the following:</p> <ul style="list-style-type: none"> a. An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual’s participation in unwelcome sexual conduct; or b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a program or activity of the District; or c. “Sexual assault” as defined in <u>20 U.S.C. § 1092(f)(6)(A)(v)</u>, “dating violence” as defined in <u>34 U.S.C. § 12291(a)(10)</u>, “domestic violence” as defined in <u>34 U.S.C. § 12291(a)(8)</u>, or “stalking” as defined in <u>34 U.S.C. § 12291(a)(30)</u>. <p>“Sexual harassment” for purposes of this policy does not include all improper conduct based on sex. Conduct which is not sexual harassment may violate other District policies and be subject to disciplinary action, including under Policy DAI, DHA, DKBA, DLA, FA, FGAD, and FHA, among others.</p> <p>7. “Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to any District program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District’s educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact</p>
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SAFE SCHOOLS: SEXUAL HARASSMENT

BOARD POLICY

Issue Date: 1/2/20 FH

It is the policy of the Board of Education of the Duchesne County School District to provide an educational environment free from sexual harassment and discrimination on the basis of sex. It shall be a violation of this policy for any student to sexually harass any other student. The District encourages all victims of sexual harassment and persons with knowledge of sexual harassment to make a written report of any harassment immediately. All complainants have the right to be free from retaliation of any kind. The District will promptly investigate all formal, informal, verbal, and written complaints of sexual harassment, and take prompt corrective action to end the harassment.

NO PRIVATE RIGHTS

Issue Date: 1/2/20 FH

Nothing in this policy shall be construed to give any right, claim or action beyond the specific process provided in this policy.

DEFINITIONS

Issue Date: 1/2/20 FH

1. "Sexual Harassment" means unwelcome sexual advances, requests for sexual favors, other physical or verbal conduct or communications of a sexual nature, and any other gender-based harassment, when:
 1. Submission to or rejection of the conduct affects the student's academic performance, participation in school-sponsored activities, or any other aspect of the student's education; or
 2. The conduct has the purpose or effect of unreasonably interfering with a student's academic performance or participation in school-sponsored activities, or

between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

34 CFR § 106.30(a)

Title IX Coordinator—

The District shall designate one or more employees to serve as Title IX Coordinator. The Title IX Coordinator is responsible and has authority to coordinate the District's compliance with Title IX and Title VII, including but not limited to responding to sexual harassment of any type. The designated Title IX Coordinator for the District is: Phillip M. Bertoch. The contact information for the Title IX Coordinator is:

Name: Phillip M. Bertoch

Title/Position: Human Resources Director

Mailing Address: 1010 E. 200 N. Roosevelt, UT 84066

Office Email: pbertoch@dcsd.org

Telephone: 435-725-4520

Reports about any form of sex discrimination (including sexual harassment, whether under the Title VII definition or the Title IX definition) may be made to the Title IX Coordinator by any person (whether or not the discrimination was directed at that person) using any of the contact methods listed above or by any other means and at any time (including during non-business hours).

34 CFR § 106.8(a)

District Response to Education Program Sexual Harassment—

As directed and coordinated by the Title IX Coordinator, the District shall, after receiving "actual knowledge" of "sexual harassment" in a District "program or activity" (as each of those terms are defined in this policy, respond promptly and reasonably to fulfill its obligations under Title IX. The District shall treat the complainant and respondent equitably and may not impose disciplinary actions or sanctions on a respondent before a determination of responsibility is made through the grievance procedure set out below. The response shall include prompt contact by the Title IX Coordinator with the complainant to:

1. Discuss the availability of supportive measures;
2. Consider the complainant's wishes with respect to supportive measures;

<p>creating an intimidating, hostile or offensive education environment.</p> <p>2. Complaints received will be thoroughly investigated to determine whether the totality of the behavior and circumstances meet any of the elements of the definitions and should be treated as sexual harassment. Unacceptable conduct may or may not constitute sexual harassment. Normally, unacceptable behavior must be severe or pervasive to be considered sexual harassment.</p> <p>3. School related conduct that the District considers unacceptable and often a part of sexual harassment includes, but is not limited to, the following:</p> <p>a. Rape, attempted rape, sexual assault, attempted sexual assault, forcible sexual abuse, hazing, and other sexual and gender-based activity of a criminal nature as defined under the Utah Criminal Code.</p> <p>5.0812.02</p> <p>5.0812.03</p> <p>5.0812.04</p> <p>5.0812.05</p> <p>2. Sexual invitations or requests for sexual activity in exchange for grades, preferences, favors, selection for extracurricular activities, homework, etc.;</p> <p>3. Offensive public sexual display of affection, including groping, fondling, petting or inappropriate touching of oneself or others;</p> <p>4. Any offensive communication that is sexually degrading or implies sexual motives or intentions, such as sexual remarks or innuendoes about an individual's clothing, appearance or activities; sexual gestures; public conversations about sexual activities or exploits; sexual rumors and "ratings list," howling, catcalls, and whistles; sexually graphic computer messages or games, etc.;</p>	<p>3. Inform the complainant that supportive measures are available with or without filing a formal complaint; and</p> <p>4. Explain the process for filing a formal complaint.</p> <p>Regardless of whether a formal complaint is filed, the District shall respond appropriately, including implementing appropriate supportive measures as determined by the Title IX Coordinator.</p> <p>In response to a formal complaint of education program sexual harassment, the District shall follow the grievance procedure set out below. In appropriate circumstances, the District's response to actual knowledge of sexual harassment may include the Title IX Coordinator signing a formal complaint to initiate the grievance procedure even when the complainant does not wish to do so.</p> <p>The District may remove a respondent from a District program or activity on an emergency basis if following an individualized safety and risk analysis the District determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. (However, such actions are subject to restrictions relating to change in placement under IDEA and restrictions under Section 504.)</p> <p>The District may place a non-student employee respondent on administrative leave during the pendency of a grievance proceeding following a formal complaint, consistent with the District policy relating to leave relating to possible employment action.</p> <p style="text-align: center;"><i>34 CFR § 106.44(a)</i></p> <p>Education Program Sexual Harassment Grievance Procedure—</p> <p>The education program sexual harassment grievance procedure is initiated by the filing of a formal complaint with the Title IX Coordinator. The parties to the procedure are the complainant and the respondent. The complaint may be filed in person, by mail, or by email. A formal complaint can be in the form of a document or electronic submission and must either contain the physical or electronic signature of the complainant or the Title IX Coordinator or otherwise indicate that the complainant is the person filing the formal complaint.</p> <p style="text-align: center;"><i>34 CFR § 106.30(a)</i></p> <p style="text-align: center;"><i>Generally Applicable Requirements</i></p>
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<p>5. Offensive name calling or profanity that is sexually suggestive, sexually degrading, implies sexual intentions;</p> <p>6. Unwelcome physical contact or closeness that is sexually suggestive, sexually degrading, or sexually intimidating such as the unwelcome touching of another's body parts, spanking, pinching, stalking, frontal-body hugs, etc.;</p> <p>7. Offensive physical pranks or touching of an individual's clothing, such as hazing and initiation, "streaking," "mooning," "snuggies," or "wedgies," bra-snapping, skirt "flip-ups," "spiking" (pulling down someone's pants or swimming suit); pinching; placing hands inside an individual's pants, shirt, blouse, or dress, etc.;</p> <p>8. Gestures that are sexually suggestive, sexually degrading or imply sexual motives or intentions;</p> <p>9. Clothing with sexually obscene or sexually explicit slogans or messages;</p> <p>10. Written or pictorial display or distribution of pornographic or other sexually explicit materials such as magazines, videos, films, etc.</p> <p><i>SUPPORT OF STUDENTS SUBJECT TO SEXUAL HARASSMENT</i></p> <p><i>Issue Date: 1/2/20 FH</i></p> <p>When it is determined that a student has been subject to sexual harassment, consideration should be given to what support, counseling, or other assistance the student may need to prevent such mistreatment from adversely affecting the student's ability to learn and function in the school setting.</p> <p><i>PROTECTION FROM REPRISALS</i></p> <p><i>Issue Date: 1/2/20 FH</i></p> <p>Students filing complaints shall be free from bias, collusion, intimidation, or reprisal.</p> <p>Students subjected to sexual harassment are first encouraged to confront the harasser and tell the harasser to stop the conduct because it is unwelcome. Complainants should document the incident(s) of harassment, and any</p>	<p>The following standards and requirements apply generally throughout the grievance and appeal process:</p> <ol style="list-style-type: none"> 1. The respondent is presumed to be <i>not</i> responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. <p style="text-align: center;"><i>34 CFR § 106.45(b)(1)(iv)</i></p> 2. The District is to shoulder the burden of gathering evidence sufficient to reach a determination regarding responsibility and is not to place that burden on the parties. <p style="text-align: center;"><i>34 CFR 106.45(b)(5)(i)</i></p> 3. Legal evidentiary privileges are to be respected: The District will not require, allow, rely on, seek disclosure of, or otherwise use information protected under a legally recognized privilege unless the person holding the privilege has waived it. <p style="text-align: center;"><i>34 CFR 106.45(b)(1)(x)</i></p> 4. The parties will be given equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. <p style="text-align: center;"><i>34 CFR 106.45(b)(5)(ii)</i></p> 5. The District will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence within the procedural framework. <p style="text-align: center;"><i>34 CFR 106.45(b)(5)(iii)</i></p> 6. The 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, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding. <p style="text-align: center;"><i>34 CFR 106.45(b)(5)(iv)</i></p> 7. For any investigative interviews or other meetings at which a party's participation is expected or invited, the party will be given written notice of the date, time, location, participants, and purpose of the interview or meeting at a time sufficiently in advance to enable the party to prepare to participate. <p style="text-align: center;"><i>34 CFR 106.45(b)(5)(v)</i></p>
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conversations they have with the harasser, noting such information as time, date, place, what was said or done, and other relevant circumstances surrounding the event(s).

5.0812.06

If the complainant's concerns are not resolved satisfactorily through a discussion with the harasser, or if the complainant feels he/she cannot discuss the concerns with the harasser, the complainant should directly inform school staff of the complaint and should clearly indicate what action he/she wants taken to resolve the complaint. Whenever reasonable, the complainant should file a written complaint.

Any school employee who receives a complaint of sexual harassment from a student shall inform the student of the employee's obligation to report the complaint to the principal, and then shall immediately notify the principal.

Complainants who contact school staff with a complaint are encouraged to submit the complaint in writing. However, complaints may be filed verbally. Alternate methods of filing complaints shall be made available to individuals with disabilities who need accommodation.

CONFIDENTIALITY

Issue Date: 1/2/20 FH

It is District policy to respect the privacy and anonymity of all parties and witnesses to complaints brought under this policy. However, because an individual's right to confidentiality must be balanced with the District's obligations to cooperate with police investigations or legal proceedings, or to investigate and take necessary action to resolve a complaint, the District retains the right to disclose the identity of parties and witnesses to complaints in appropriate circumstances.

Where a complaint involves allegations of child abuse, the complaint shall be immediately reported to appropriate law enforcement authorities and the anonymity of both the complainant and school officials involved in the

8. The time frames provided in this policy are intended to provide reasonably prompt resolution of complaints. However, the District may, for good cause and with written notice to the complainant and respondent explaining the reasons, temporarily delay the grievance process or extend a time frame for a limited time. Good cause may include (but is not limited to) 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.

34 CFR 106.45(b)(1)(v)

Supportive Measures During the Grievance Process

During the pendency of the grievance process, either party may request or the Title IX Coordinator may offer supportive measures as defined above, and such measures shall be provided as the Title IX Coordinator determines is appropriate.

34 CFR § 106.45(b)(1)(ix)

Potential Disciplinary Sanctions for Responsible Respondents

A respondent who is found responsible following the conclusion of the grievance procedure may be subject to disciplinary action in the form of remedies that are in the nature of supportive measures for the complainant but which impose a burden on the respondent and are punitive in nature. A responsible employee respondent may be sanctioned by disciplinary actions including probation, suspension (with or without pay), and termination of employment. (See Policy FHA.) The same sanctions may be imposed on a respondent who admits to being responsible for sexual harassment without challenging the charge through the formal grievance process.

34 CFR § 106.45(b)(1)(vi)

Consolidation of Complaints

Where the allegations of sexual harassment arise out of the same facts or circumstances, the Title IX Coordinator may consolidate formal complaints made against more than one respondent, or made by more than one complainant against one or more respondents, or made by one party against another party. When complaints are consolidated, singular references in this policy (for example, "complainant") also include the plural as is applicable.

34 CFR § 106.45(b)(4)

Summary Dismissal of Complaint

After receiving the formal complaint, the Title IX Coordinator shall review the allegations in the complaint and make a determination whether, accepting

<p>investigation will be strictly protected as required by Utah Code § 62A-4a-412.</p> <p>1. Initial Investigative Procedures.</p> <p>a.</p> <p>The school administrator has the responsibility to conduct a preliminary review when he/she receives a verbal or written complaint of sexual harassment, or if he/she observes sexual harassment. The site administrator should take the following steps:</p> <ul style="list-style-type: none"> i. Interview the complainant and document the conversation. Instruct the complainant to have no contact or communication regarding the complaint with the alleged harasser. Ask the complainant specifically what action he/she wants taken in order to resolve the complaint. Notify the complainant of his/her right to have someone of the same gender conduct or be present during the investigation. The Complainant should be urged to make a written statement where feasible under the circumstances. ii. Interview the alleged harasser regarding the complaint and inform the alleged harasser that if the objectionable conduct has occurred, it must cease immediately. Document the conversation. iii. Instruct the alleged harasser to have no contact or communication regarding the complaint with the complainant and to not take any retaliatory action against the complainant. iv. If the alleged harasser admits all or part of the allegations, issue a written warning/reprimand to the harasser and place a copy in the student's cumulative education record/file. If the harasser is an employee, submit a copy of the written warning/ reprimand to the District Human Resources Department for inclusion in the harasser's personnel file. In certain cases expulsion may be warranted for a first <p>5.0812.07</p>	<p>the allegations as true, any of the following circumstances are present:</p> <ul style="list-style-type: none"> 1. The conduct alleged does not constitute sexual harassment as defined in this policy. 2. The conduct alleged did not occur in a District program or activity. 3. The conduct alleged did not occur against a person in the United States. <p>If any of these circumstances are present, the Title IX Coordinator shall dismiss the complaint for purposes of sexual harassment and this policy and shall promptly send simultaneous written notice of the dismissal and the reason(s) for dismissal to the parties. If the alleged conduct constitutes employment sexual harassment as defined above, the Title IX Coordinator shall follow the process outlined above for addressing such harassment. If the alleged conduct constitutes misconduct under other District policies regulating employee or student conduct, the Title IX Coordinator shall refer the complaint to the appropriate administrator for consideration for investigation and possible disciplinary action.</p> <p style="text-align: center;"><i>34 CFR § 106.45(b)(3)(i)</i> <i>Permissive Dismissal of Complaint</i></p> <p>At any time during the investigation of a formal complaint or the determination process, the Title IX Coordinator may dismiss a complaint or particular allegations in the complaint if:</p> <ul style="list-style-type: none"> 1. The complainant gives written notice to the Title IX Coordinator that the complainant wants to withdraw the formal complaint or particular allegations in the complaint; 2. The respondent is an employee and is no longer employed by the District or is a student and is no longer enrolled in the District; or 3. Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the complaint or the allegations in the complaint. <p>If the Title IX Coordinator determines to dismiss the complaint on any of these grounds, then the coordinator shall promptly send simultaneous written notice of the dismissal and the reason(s) for dismissal to the parties.</p> <p style="text-align: center;"><i>34 CFR § 106.45(b)(3)(ii)</i> <i>Appointment of Investigator and Decision Maker</i></p> <p>Upon receipt of a formal complaint, the Title IX Coordinator shall either determine that the Title IX Coordinator will investigate the complaint or shall appoint a qualified and trained District employee to investigate the complaint.</p> <p>The Title IX Coordinator shall also appoint one, three, or five qualified and trained District</p>
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offense if the conduct is egregious. Repeated offenses may warrant suspension and expulsion. In addition, promptly contact the Human Resources Department, Area Director, or Title IX Coordinator in situations involving repeated violations or severe infractions such as criminal touching, quid pro quo (e.g., offering educational rewards or punishments as an inducement for sexual favors), or acts which shock the conscience of a reasonable person.

- v. If the alleged harasser denies the allegations, promptly conduct a further investigation including interviewing witnesses, if any.
- vi. Submit a copy of all investigation and interview documentation to the District Compliance Officer/Title IX Coordinator, and to the Human Resources Department if the complaint involves a School District employee.
- vii. Report back to the complainant, notifying him/her in person and in writing regarding the action taken to resolve the complaint. Instruct the complainant to report immediately if the objectionable behavior occurs again or if the alleged harasser retaliates against him/her.
- viii. Notify the complainant that if he/she desires further investigation and action, the complaint will be forwarded for a District level investigation.

PRINCIPAL'S RECOMMENDATION

Issue Date: 1/2/20 FH

The principal must consider the severity or pervasiveness of the conduct and exercise discretion in determining whether a District level investigation is necessary regardless of the complainant's desires. If a blatant violation occurs involving criminal touching, quid pro quo (e.g., offering an academic reward or punishment as an inducement for sexual favors), or acts which shock the conscience of a reasonable person, the complaint should be referred promptly to the appropriate Area Director, Assistant Superintendent, Superintendent, Human Resources Director, or Compliance Officer/Title IX Coordinator. In addition, where the principal has reasonable suspicion that the alleged harassment involves

employees to render the decision on the complaint as provided below. Neither the Title IX Coordinator nor any investigator on a complaint may serve as a decision maker.

34 CFR § 106.45(b)(7)(i)

Written Notice of Complaint

Within 7 days of receipt of a formal complaint, the Title IX Coordinator shall provide to all known parties a written notice which includes:

1. Notice of the grievance procedures, including the availability of voluntary mediation as provided in this policy;
2. Notice of the allegations potentially constituting sexual harassment. This notice shall include, as known at the time of the notice, the identities of the parties involved, a description of the conduct allegedly constituting sexual harassment, and the date(s) and location(s) of the alleged incident(s). This information must be provided with sufficient time for a party to prepare a response before an initial interview;
3. The statement 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;
4. Notice that each party may have the assistance of an advisor of their choice (who may be an attorney but is not required to be an attorney);
5. Notice that each party may inspect and review evidence;
6. Notice that under this policy parties are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process.

If during the course of the investigation the District decides to investigate allegations (about the complainant or the respondent) which are not included in the initial written notice, then the District will provide notice of the additional allegations to all known parties.

34 CFR § 106.45(b)(1)(v), (2)

Investigation, Initial Response to Evidence, and Investigative Report

The investigation will be completed as soon as reasonably possible, and generally not more than 30 days after the investigator is assigned.

34 CFR § 106.45(b)(1)(v)

The investigation should be conducted so as to obtain the evidence necessary to make a determination regarding responsibility. Typically, this would include interviewing and/or obtaining written or recorded

<p>criminal activity, he/she should immediately contact appropriate law enforcement authorities.</p> <p>Whenever a sexual harassment complaint is made, the principal must take action to investigate the complaint or to refer the complaint for investigation even if the student does not request any action or withdraws the complaint.</p> <p>Investigations should commence as soon as possible.</p> <p>If the initial investigation results in a determination that sexual harassment did occur, and the harasser repeats the wrongful behavior or retaliates against the complainant, the principal will take prompt disciplinary action and will notify the District Compliance Officer/Title IX Coordinator.</p> <p><i>DISTRICT LEVEL INVESTIGATION</i></p> <p><i>Issue Date: 1/2/20 FH</i></p> <p>Complainants who are not satisfied with the outcome of the initial investigation may request a District level investigation by submitting the written complaint to the appropriate Compliance Officer/Title IX Coordinator.</p> <p>5.0812.08</p> <p>5.0812.09</p> <p>The District level investigation should commence as soon as possible.</p> <p>In conducting the District level investigation, the District may choose to use an investigative team that has received training in sexual harassment investigation or that has previous experience investigating sexual harassment complaints.</p> <p>If this investigation results in a determination that sexual harassment did occur, prompt corrective action may be taken including suspension, expulsion, change of placement, or loss of extracurricular activities.</p>	<p>statements from the complainant and the respondent as well as any witnesses to the alleged conduct. It would also include gathering relevant physical and documentary evidence, including but not limited to video or audio recordings, notes, email, text messages, and social media. However, the District may not obtain, access, or use a party's treatment records in any way unless the party has given voluntary written consent for those records to be used in the grievance process. (If the party is under 18 years old and is not attending an institution of postsecondary education, the consent must be given by the student's parent.) For purposes of this restriction, "treatment records" means records made or maintained in connection with providing treatment to a party 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.</p> <p><i>34 CFR § 106.45(b)(5)(i)</i></p> <p>Prior to the conclusion of the investigation and the completion of the investigative report, the District will provide to the parties copies of all evidence obtained in the investigation which is directly related to the allegations in the complaint, including any inculpatory or exculpatory investigation and even if the District does not intend to rely on the evidence in making a responsibility determination. The copies will be provided in either electronic format or a hard copy. Each party may, within 10 days of being provided the evidence, submit a written response to the investigator regarding the evidence.</p> <p><i>34 CFR § 106.45(b)(1)(v), (5)(vi)</i></p> <p>After considering the evidence and any written response by the parties to the evidence, the investigator will complete an investigative report which fairly summarizes the relevant evidence. The completed report will be provided to each party and the party's advisor (if any) in electronic format or hard copy for review and written response. The report shall be provided at least 15 days before the time when the decision maker begins consideration of the evidence.</p> <p><i>34 CFR § 106.45(b)(1)(v), (5)(vii)</i></p> <p><i>Determination by Decision Maker</i></p> <p>Upon the completion of the investigative report, the Title IX Coordinator shall notify the parties of the date when the decision maker will begin consideration of the evidence.</p> <p><u>Position statement</u></p> <p>On or before the date the decision maker begins consideration of the evidence, a party may submit a written statement which outlines the party's position regarding the allegations and evidence and states the party's requested determination regarding responsibility.</p> <p><u>Written questions</u></p>
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<p>Following the District investigation and determination, the District will notify the complainant in writing of the action taken.</p> <p>The District level review exhausts all process and remedies provided under this policy.</p> <p><i>RETALIATION PROHIBITED</i></p> <p><i>Issue Date: 1/2/20 FH</i></p> <p>Any act of reprisal against any person who opposes sexually harassing behavior, or who has filed a complaint, is prohibited and therefore subject to disciplinary action. Likewise, reprisal against any person who has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of a sexual harassment complaint is prohibited and therefore subject to disciplinary action.</p> <p><i>DISCIPLINE</i></p> <p><i>Issue Date: 1/2/20 FH</i></p> <p>Any individual who violates this policy will be subject to appropriate disciplinary action under applicable school discipline policies, District Human Resource policies, and the District Safe Schools Policy.</p> <p>Depending on the severity or persistence of the harassment, an individual who violates this policy may be subject to suspension, exclusion, probation, termination, or alternate placement. In addition, students who violate this policy may lose the privilege of participating in extracurricular activities.</p> <p>If school administrators have reasonable suspicion that the harassment involves sexual assault, rape, or any other activity of a criminal nature, the District shall notify appropriate law enforcement authorities and immediately initiate proceedings to remove the accused party from the situation.</p> <p>If the accused is a student with a disability whose education involves services under the Individuals with Disabilities Education Act (IDEA) or accommodations under Section 504 of the Rehabilitation Act or the Americans with Disabilities Act, no disciplinary action, change of placement, or other steps shall be taken</p>	<p>Each party may, no later than 5 days before the time the decision maker begins consideration of the evidence, submit written, relevant questions that the party wants asked of any party or witness. Proposed questions may refer to or rely on any of the evidence disclosed to the parties by the investigator.</p> <p>The decision maker shall determine whether each question is relevant to the allegations and to the issue of whether respondent is responsible for sexual harassment. However, questions and evidence regarding the complainant’s sexual predisposition or prior sexual behavior are not relevant unless the questions and evidence either:</p> <ol style="list-style-type: none"> 1. Are being offered to show that someone other than the respondent committed the alleged conduct, or 2. Are being offered to show consent and concern specific instances of the complainant’s prior sexual behavior with respect to the respondent. <p>For any question excluded as not relevant, the decision maker must explain the decision to the party proposing the question.</p> <p>The decision maker shall submit the approved questions and shall provide copies of the answers to all parties. Each party may, within 2 days of being provided answers, submit limited additional follow-up questions.</p> <p>The decision maker shall determine whether follow-up questions are relevant and may also impose reasonable limitations on the number of follow-up questions allowed. The decision maker must explain to the party proposing the question any decision to exclude a follow-up question based on relevance.</p> <p>The decision maker shall submit the approved follow-up questions and shall provide copies of the answers to all parties.</p> <p><i>34 CFR § 106.45(b)(5)(vi), (6)(ii)</i> <u>Written determination</u></p> <p>After weighing the evidence and considering the materials submitted (including the investigative report and the parties’ written submissions), the decision maker shall make a determination regarding responsibility. In so doing, the decision maker shall apply a preponderance of the evidence standard. Evidence must be evaluated objectively and credibility determinations may not be based on a person’s status as a complainant, respondent, or witness.</p> <p><i>34 CFR § 106.45(b)(1)(ii), (vii), (b)(7), (b)(7)(i)</i></p> <p>If the decision maker consists of a panel of three or five individuals, the decision will be based on majority vote.</p> <p>The decision maker will issue a written statement setting forth the determination, which must</p>
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<p>without convening a multi-disciplinary team to determine the extent to which the harassing behavior is a manifestation of the student's disability.</p> <p><i>FALSE COMPLAINTS</i></p> <p><i>Issue Date: 1/2/20 FH</i></p> <p>5.0812.10</p> <p>5.0812.11</p> <p>5.0812.12</p> <p>False, malicious or frivolous complaints of sexual harassment shall result in corrective or disciplinary action taken against the complainant.</p> <p><i>RECORDS</i></p> <p><i>Issue Date: 1/2/20 FH</i></p> <p>Separate confidential records of all sexual harassment complaints and initial investigations shall be maintained in the principal's office. Records of district level investigations shall be maintained in the office of the Compliance Officer/Title IX Coordinator, as follows:</p> <ol style="list-style-type: none"> 1. Records of initial complaints and investigations shall be retained for at least one (1) year. 2. Records of district level investigations shall be retained for at least three (3) years. 3. Records of complaints and investigations of blatant violations involving criminal touching, quid pro quo, other criminal acts, or acts which shock the conscience of a reasonable person shall be retained permanently. <p><i>DISSEMINATION OF POLICY</i></p> <p><i>Issue Date: 1/2/20 FH</i></p> <p>A summary of this policy and related materials shall be posted in a prominent place in each District facility. The policy shall also be published in student registration materials, student and employee handbooks, and other</p>	<p>include the following elements:</p> <ol style="list-style-type: none"> 1. Identification of the allegations potentially constituting sexual harassment as defined above; 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 conduct policies (including this policy and student and employee discipline policies) to the facts; 5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility. <ol style="list-style-type: none"> a. When a respondent is found responsible for sexual harassment against the complainant, the determination shall provide appropriate remedies to the complainant, which shall be designed to restore or preserve the complainant's equal access to the District's program or activity. b. Such remedies may include the kinds of services which are included in "supportive measures" as defined above, but need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. 6. A description of the appeal procedures and the permissible grounds for appeal by the complainant or respondent (as set forth below). <p style="margin-left: 40px;"><i>34 CFR § 106.45(b)(1)(i), (b)(7)(ii)</i></p> <p style="margin-left: 40px;">The written determination shall be provided promptly and generally within 14 days after the date the decision maker begins consideration of the evidence. The written determination must be provided simultaneously to the parties.</p> <p style="margin-left: 40px;"><i>34 CFR § 106.45(b)(1)(v), (b)(7)(iii)</i></p> <p style="margin-left: 40px;">The decision maker's determination becomes final on the date when the time to appeal expires (if no appeal is timely filed) or on the date that the District provides the written determination on a timely appeal.</p> <p style="margin-left: 40px;"><i>34 CFR § 106.45(b)(7)(iii)</i></p> <p style="margin-left: 40px;">The Title IX Coordinator is responsible for the effective implementation of any remedies.</p> <p style="margin-left: 40px;"><i>Appeal</i></p>
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appropriate school publications as directed by the District Compliance officer/Title IX Coordinator.

Grounds for appeal

A complainant or a respondent may appeal a dismissal decision or the determination of the decision maker based on the following grounds:

1. A procedural irregularity which affected the outcome;
2. New evidence that could affect the outcome which was not reasonably available at the time the dismissal was made or the decision maker made the determination; or
3. There was a conflict of interest or bias on the part of the Title IX Coordinator, an investigator, or a decision maker (either for or against complainants or respondents generally or for or against the individual complainant or respondent) that affected the outcome.

34 CFR § 106.45(b)(8)

Time for appeal

An appeal must be submitted within 14 days after the decision (the notice of dismissal or the decision maker's written determination) is provided to the party. Appeals submitted after that date will not be considered and the decision will be final.

34 CFR § 106.45(b)(1)(v)

Appeal process

The appeal must be delivered to the Title IX Coordinator, must be in writing and must identify each ground for appeal, together with supporting evidence and argument.

Upon receipt of a timely appeal, the following process will be implemented:

1. The Title IX Coordinator will appoint a qualified and trained District employee as the appeal officer. This person must be someone other than a decision maker on the complaint appealed from, the Title IX Coordinator or any investigator on the complaint.
2. The Title IX Coordinator will give the other party written notice of the appeal, including a copy of the appeal.
3. The other party may provide a written response to the appeal within 14 days of being provided the appeal, including supporting evidence and argument.
4. After the time for response has expired, the appeal officer shall consider the appeal and any response and within 14 days issue a written decision describing the result of the appeal and the rationale for that result.
5. The appeal officer considers only whether the appealing party has shown that one or more of the grounds for appeal have been

demonstrated. The appeal officer must not reweigh the evidence considered by the decision maker and may consider new evidence only as it is relevant to the particular ground of appeal.

6. If the appeal officer determines that a ground for appeal has been established, then the appeal officer will determine what remedy is appropriate.
7. The appeal officer shall provide the appeal decision simultaneously to both parties.

34 CFR § 106.45(b)(1)(v), (viii)

Mediation

Except for complaints that an employee has sexually harassed a student, after a formal complaint has been filed, the parties may engage in mediation facilitated by the District as follows. Mediation may occur at any time before the decision maker issues the written determination.

The mediator will keep all information or evidence shared with the mediator strictly confidential and will not disclose that information outside the mediation process. In the complaint proceeding, the parties may not refer to or use any statements or information received only through the mediation process. (This does not include a written agreement by the parties resolving the complaint.) Either party may withdraw from mediation for any reason at any time before the party has agreed to a resolution of the complaint.

Once mediation is initiated, the complaint process will be suspended until the mediation ends (either with signing of a written agreement by the parties or by one or both parties withdrawing from the mediation). However, if mediation is not completed within 30 days of being initiated, the complaint process will resume.

If one or both parties express interest in mediation the Title IX Coordinator will provide both parties with a written notice which describes the allegations of the complaint and which explains the requirements and conditions of the mediation process. Before mediation may proceed, both parties must have been provided the written notice above and must give voluntary written consent to participate in mediation. (If a party is a student under 18 who is not attending a postsecondary institution, this consent must be provided by the student's parent.)

If the parties agree to mediation, the Title IX Coordinator will appoint a District employee with appropriate training to serve as the mediator. The mediator may not be the Title IX Coordinator and may not participate in the complaint resolution in any other way (may not serve as an investigator, decision maker, or appeal officer).

If the parties reach an agreement to resolve the

complaint through mediation, the mediator will reduce that agreement to writing and upon signing of the agreement by the parties will provide a copy of the agreement to the Title IX Coordinator. The Title IX Coordinator will implement the agreement, subject to the coordinator's authority to reject the agreement or request the parties to modify the agreement as needed for the District to meet its obligations under Title IX or to avoid unreasonable burdens on the District.

34 CFR § 106.45(b)(1)(v), (b)(9)

Qualification and Training—

To be qualified to serve as a Title IX Coordinator, investigator, decision maker, appeal officer, or mediator, an individual must not have a conflict of interest or bias for or against complainants or respondents generally or against a specific complainant or respondent.

The District will provide training on the following issues to Title IX coordinators, investigators, decision makers, appeal officers, and mediators:

1. The definition of sexual harassment;
2. The scope of the District's programs and activities;
3. How to conduct an investigation and grievance process including hearings, appeals, and mediations, as applicable;
4. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
5. 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;
6. For investigators, training on issues of relevance relating to creating an investigative report that fairly summarizes relevant evidence;

Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment. Records of training materials shall be kept for 7 years by the Title IX Coordinator and shall be made available to the public on the District's website.

34 CFR § 106.45(b)(1)(iii), (10)(i)(D)

Retaliation Prohibited—

It is prohibited to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or implementing regulations or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to

participate in any manner in an investigation, proceeding, or hearing relating to sexual harassment or other types of sex discrimination. Prohibited retaliation includes acting with the purpose of interfering with any right or privilege secured by Title IX or implementing regulations or this policy by intimidation, threats, coercion, or discrimination. If brought for the purpose of interfering with these rights, prohibited retaliation includes charges against an individual for 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. Reports of retaliation should be made as another form of sex discrimination under Policy FA (for students) or Policy DAA (for employees). Complaints regarding retaliation against a student may be raised under Policy FGE or as applicable under Policy FGAD or regarding retaliation against an employee under Policy DHC or as applicable under Policy DLA or Policy DLB.

34 CFR § 106.71(a)

Records—

Records relating to sexual harassment shall be maintained by the Title IX Coordinator in a confidential manner and shall be kept for a period of at least 7 years.

The Title IX Coordinator shall create a record regarding each instance when the District has actual knowledge of sexual harassment (that is, when the District is required to respond in some way). This record shall include any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, shall document the basis for the conclusion that the District's response was not deliberately indifferent, and shall document that the District has taken measures designed to restore or preserve equal access to the District's education program or activity. If a complainant was not provided with supportive measures, then the Title IX Coordinator must document the reasons why that was not clearly unreasonable in light of the known circumstances.

In addition to the records in the prior paragraph, the Title IX Coordinator shall maintain records regarding each sexual harassment investigation, any disciplinary sanctions imposed, any remedies provided to the complainant designed to restore or preserve equal access to the District's program or activity, and regarding any appeal (including the result).

34 CFR § 106.45(b)(10)

Dissemination of Policy—

Notice of this policy and of the name and contact information of the Title IX Coordinator shall be

provided to applicants for employment or for admission, employees, employee associations, students, and parents of students. The contact information for the Title IX Coordinator shall be prominently displayed on the District's website and in employment application materials and student admission materials. In addition, a copy of this policy shall be published on the District website and included in in employment application materials, student admission materials, in materials provided to employees, and in student handbooks. A copy of this policy shall also be provided to the appropriate officer of each employee association.

34 CFR § 106.8(b)(2), (c)