
Note: This policy addresses discrimination, harassment, and retaliation ~~against~~~~involving~~ District employees. ~~For Title IX and other provisions regarding~~ ~~For~~ discrimination, harassment, and retaliation ~~against~~~~involving~~ students, see FFH. For reporting requirements related to child abuse and neglect, see FFG.

Definitions

Solely for purposes of this policy, the term “employee” includes former employees, applicants for employment, and unpaid interns.

Statement of Nondiscrimination

The District prohibits discrimination, including harassment, against any employee on the basis of race, color, religion, sex, ~~gender~~, national origin, age, disability, or any other basis prohibited by law. Retaliation against anyone involved in the complaint process is a violation of District policy ~~and is prohibited~~.

Discrimination

Discrimination against an employee is defined as conduct directed at an employee on the basis of race, color, religion, sex, ~~gender~~, national origin, age, disability, or any other basis prohibited by law, that adversely affects the employee’s employment.

~~In accordance with law, discrimination on the basis of sex includes discrimination on the basis of biological sex, gender identity, sexual orientation, gender stereotypes, or any other prohibited basis related to sex.~~

Prohibited Conduct

~~In this policy, the term “prohibited conduct” includes discrimination, harassment, and retaliation as defined by this policy, even if the behavior does not rise to the level of unlawful conduct.~~

~~Prohibited conduct also includes sexual harassment as defined by Title IX. [See FFH(LEGAL)]~~

Prohibited Harassment

Prohibited harassment of an employee is defined as physical, verbal, or nonverbal conduct based on an employee’s race, color, religion, sex, ~~gender~~, national origin, age, disability, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive that the conduct:

1. Has the purpose or effect of unreasonably interfering with the employee’s work performance;
2. Creates an intimidating, threatening, hostile, or offensive work environment; or
3. Otherwise adversely affects the employee’s performance, environment, or employment opportunities.

Examples

Examples of prohibited harassment may include offensive or derogatory language directed at another person’s religious beliefs or

practices, accent, skin color, gender identity, or need for workplace accommodation; threatening or intimidating conduct; offensive jokes, name calling, slurs, or rumors; **cyberharassment**; physical aggression or assault; display of graffiti or printed material promoting racial, ethnic, or other **negative** stereotypes; or other **kinds** ~~types~~ of aggressive conduct such as theft or damage to property.

Sex-Based Harassment

As required by law, the District shall follow the procedures below at Response to Sexual Harassment—Title IX upon a report of sex-based harassment, including sexual harassment, when such allegations, if proved, would meet the definition of sexual harassment under Title IX. [See FFH(LEGAL)]

Sexual Harassment

Sexual harassment is a form of sex discrimination defined as unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

1. Submission to the conduct is either explicitly or implicitly a condition of an employee's employment, or when submission to or rejection of the conduct is the basis for an employment action affecting the employee; or
2. The conduct is so severe, persistent, or pervasive that it has the purpose or effect of unreasonably interfering with the employee's work performance or creates an intimidating, threatening, hostile, or offensive work environment.

Examples

Examples of sexual harassment may include sexual advances; touching intimate body parts; coercing or forcing a sexual act on another; jokes or conversations of a sexual nature; and other sexually motivated conduct, **contact**, or communication, **including electronic communication** ~~or contact~~.

Retaliation

~~The District prohibits retaliation against an employee who makes a claim alleging to have experienced discrimination or harassment, or another employee who, in good faith, makes a report, serves as a witness, or otherwise participates in an investigation.~~

~~Examples~~

~~Examples of retaliation may include termination, refusal to hire, demotion, and denial of promotion. Retaliation may also include threats, unjustified negative evaluations, unjustified negative references, or increased surveillance.~~

Prohibited Conduct

~~In this policy, the term "prohibited conduct" includes discrimination, harassment, and retaliation as defined by this policy, even if the behavior does not rise to the level of unlawful conduct.~~

Reporting Procedures

Any ~~An~~ employee who believes that he or she has experienced prohibited conduct or believes that another employee has experienced

prohibited conduct should immediately report the alleged acts. The employee may report the alleged acts to his or her supervisor or campus principal.

Alternatively, the employee may report the alleged acts to one of the District officials below.

Definition of District Officials

For the purposes of this policy, District officials are the Title IX coordinator, the ADA/Section 504 coordinator, and the Superintendent.

Title IX Coordinator

Reports of discrimination based on sex, including sexual harassment, may be directed to the designated Title IX coordinator. [See DIA(EXHIBIT)]

ADA / Section 504 Coordinator

Reports of discrimination based on disability may be directed to the designated ADA/Section 504 coordinator. [See DIA(EXHIBIT)]

Superintendent

The Superintendent shall serve as coordinator for purposes of District compliance with all other ~~nondiscrimination~~ ~~antidiscrimination~~ laws.

Alternative Reporting Procedures

An employee shall not be required to report prohibited conduct to the person alleged to have committed ~~the conduct~~. Reports concerning prohibited conduct, including reports against the Title IX coordinator or ADA/Section 504 coordinator, may be directed to the Superintendent.

A report against the Superintendent may be made directly to the Board. If a report is made directly to the Board, the Board shall appoint an appropriate person to conduct an investigation.

Timely Reporting

To ensure the District's prompt investigation, reports ~~Reports~~ of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act. ~~A failure to promptly report may impair the District's ability to investigate and address the prohibited conduct.~~

Notice of Report

Any District supervisor who receives a report of prohibited conduct shall immediately notify the appropriate District official listed above and take any other steps required by this policy.

Any District employee who receives a report of prohibited conduct based on sex, including sexual harassment, shall immediately notify the Title IX coordinator.

Investigation of Reports Other Than Title IX ~~the Report~~

The following procedures apply to all allegations of prohibited conduct other than allegations of harassment prohibited by Title IX. [See FFH(LEGAL)] For allegations of sex-based harassment that,

if proved, would meet the definition of sexual harassment under Title IX, see the procedures below at Response to Sexual Harassment—Title IX.

The District may request, but shall not ~~require~~~~insist upon~~, a written report. If a report is made orally, the District official shall reduce the report to written form.

Initial Assessment

Upon receipt or notice of a report, the District official shall determine whether the allegations, if ~~proved~~~~proven~~, would constitute prohibited conduct as defined by this policy. If so, the District ~~official~~ shall immediately authorize or undertake an investigation, regardless of whether a criminal or regulatory investigation regarding the same or similar allegations is pending.

Interim Action

If appropriate, the District shall promptly take interim action calculated to prevent prohibited conduct during the course of an investigation.

District Investigation

The investigation may be conducted by the District official or a designee, such as the campus principal, or by a third party designated by the District, such as an attorney. When appropriate, the ~~campus~~ principal or supervisor shall be involved in or informed of the investigation.

The investigation may consist of personal interviews with the person making the report, the person against whom the report is filed, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.

Concluding the Investigation

Absent extenuating circumstances, the investigation should be completed within ten District business days from the date of the report; however, the investigator shall take additional time if necessary to complete a thorough investigation.

The investigator shall prepare a written report of the investigation. The report shall be filed with the District official overseeing the investigation.

District Action

If the results of an investigation indicate that prohibited conduct occurred, the District shall promptly respond by taking appropriate disciplinary or corrective action reasonably calculated to address the conduct.

The District may take action based on the results of an investigation, even if the conduct did not rise to the level of prohibited or unlawful conduct.

Confidentiality

To the greatest extent possible, the District shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation and comply with applicable law.

Appeal

A complainant who is dissatisfied with the outcome of the investigation may appeal through DGBA(LOCAL), beginning at the appropriate level.

The complainant may have a right to file a complaint with appropriate state or federal agencies.

Response to Sexual Harassment—Title IX

General Response

For purposes of the District’s response to reports of harassment prohibited by Title IX, definitions can be found in FFH(LEGAL).

When the District receives notice or an allegation of conduct that, if proved, would meet the definition of sexual harassment under Title IX, the Title IX coordinator shall promptly contact the complainant to:

- Discuss the availability of supportive measures and inform the complainant that they are available, with or without the filing of a formal complaint;
- Consider the complainant’s wishes with respect to supportive measures; and
- Explain to the complainant the option and process for filing a formal complaint.

The District’s response to sexual harassment shall treat complainants and respondents equitably by offering supportive measures to both parties, as appropriate, and by following the Title IX formal complaint process before imposing disciplinary sanctions or other actions that are not supportive measures against a respondent.

If a formal complaint is not filed, the District reserves the right to investigate and respond to prohibited conduct in accordance with Board policies and administrative procedures.

Title IX Formal Complaint Process

To distinguish the process described below from the District’s general grievance policies [see DGBA, FNG, and GF], this policy refers to the grievance process required by Title IX regulations for responding to formal complaints of sexual harassment as the District’s “Title IX formal complaint process.”

The Superintendent shall ensure the development of a Title IX formal complaint process that complies with legal requirements. [See FFH(LEGAL)] The formal complaint process shall be posted on the

District's website. In compliance with Title IX regulations, the District's Title IX formal complaint process shall address the following basic requirements:

1. Equitable treatment of complainants and respondents;
2. An objective evaluation of all relevant evidence;
3. A requirement that the Title IX coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process not have a conflict of interest or bias;
4. A presumption that the respondent is not responsible for the alleged sexual harassment until a determination is made at the conclusion of the Title IX formal complaint process;
5. Time frames that provide for a reasonably prompt conclusion of the Title IX formal complaint process, including time frames for appeals and any informal resolution process, and that allow for temporary delays or the limited extension of time frames with good cause and written notice as required by law;
6. A description of the possible disciplinary sanctions and remedies that may be implemented following a determination of responsibility for the alleged sexual harassment;
7. A statement of the standard of evidence to be used to determine responsibility for all Title IX formal complaints of sexual harassment;
8. Procedures and permissible bases for the complainant and respondent to appeal a determination of responsibility or a dismissal of a Title IX formal complaint or any allegations therein;
9. A description of the supportive measures available to the complainant and respondent;
10. A prohibition on using or seeking information protected under a legally recognized privilege unless the individual holding the privilege has waived the privilege;
11. Additional formal complaint procedures in 34 C.F.R. 106.45(b), including written notice of a formal complaint, consolidation of formal complaints, recordkeeping, and investigation procedures; and
12. Other local procedures as determined by the Superintendent.

Standard of
Evidence

The standard of evidence used to determine responsibility in a Title IX formal complaint of sexual harassment shall be the preponderance of the evidence.

Retaliation

The District prohibits retaliation against an employee who makes a claim alleging to have experienced discrimination or harassment, or another employee who, in good faith, makes a report of harassment or discrimination, files a complaint of harassment or discrimination, serves as a witness, or otherwise participates or refuses to participate in an investigation.

Examples

Examples of retaliation may include termination, refusal to hire, demotion, and denial of promotion. Retaliation may also include threats, intimidation, coercion, unjustified negative evaluations, unjustified negative references, or increased surveillance.

Records Retention

The District shall retain copies of allegations ~~Copies of reports alleging prohibited conduct~~, investigation reports, and related records regarding any prohibited conduct in accordance with ~~shall be maintained by~~ the District's records control schedules, but ~~District~~ for no less than the minimum amount ~~a period~~ of time required by law. ~~at least three years.~~ [See CPC]

[For Title IX recordkeeping and retention provisions, see FFH(LEGAL) and the District's Title IX formal complaint process.]

Access to Policy and Procedures

Information regarding this ~~This~~ policy and any accompanying procedures shall be distributed annually to District employees. Copies of the policy and procedures shall be ~~posted on the District's website, to the extent practicable,~~ and readily available at each campus and the ~~District's~~ District administrative offices.