
Title IX

Policy 1-103

Scope:

The District does not and will not discriminate on the basis of sex in its education program and activities that it operates pursuant to Title IX and its regulations.

This policy applies to all students, employees, parents, community members, and third parties involved in District activities, whether on or off campus and extends to admissions and employment.

Inquiries regarding the application of Title IX and its regulation may be referred to the Title IX Coordinator, the Assistant Secretary, or both.

Purpose:

The District is committed to maintaining an educational environment and workplace that is free from harassment and discrimination. Retaliation against any individual involved in the complaint process is also prohibited.

Conduct that falls within the jurisdiction of the Title IX shall be handled under the Title IX procedures set forth herein.

Prohibition Conduct

The District prohibits sexual harassment and retaliation as defined by Title IX and its regulations.

The District will adopt procedures in the accompanying Administrative Regulation for addressing complaints and incidents of sexual harassment and retaliation under Title IX. The District will comply with all Title IX procedures as required under the law and any other applicable state and federal laws and regulations.

Title IX Sexual Harassment

1. **Quid Pro Quo:** When a District employee conditions District benefits, services, aids, etc. on participation in unwelcome sexual conduct.
2. **Hostile Environment:** Unwelcome sexual conduct that is so severe, pervasive, and objectively offensive that it denies a person equal access to District educational programs/activities.
3. **Sexual Assault, dating violence, domestic violence, or stalking:** Defined in 20 U.S.C. § 1092 and 34 U.S.C. § 12291

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The sexual harassment must have occurred:

1. In the United States;
2. In the District's educational program or activity in which the District exercises control over the harasser and the circumstances in which the harassment occurs; and
3. The victim must have been participating in the District's educational program/activity at the time the harassment occurred.

Complaints that do not satisfy the above Title IX definition may still violate other Board Policies such as Board Policies 1-101 and 1-102 and shall be addressed in accordance with those policies.

Actual Knowledge Requirement

The District shall respond to sexual harassment promptly and without deliberative indifference when it has actual knowledge of the harassment allegations. Actual knowledge is provided through either (1) submission of a complaint; or (2) other circumstances demonstrating that an employee of the District knew or should have known of the allegations.

Notice and Posting Requirements

The District will comply with all notice and posting requirements provided in 34 CFR § 106.8, Education Code § 221.61, and all other applicable law.

Administrative Regulations

Complaint and Reporting Procedures:

1. Filing a Complaint: Any individual who experiences or witnesses sexual harassment should report the incident promptly to the Title IX Coordinator or any District employee.
2. Title IX Coordinator Contact:
 - Name: Megan Tresham
 - Title: Superintendent
 - Address: 3042 Old San Jose Rd., Soquel, CA 95073
 - Phone: (831) 475-6812
 - Email: mtresham@mountainesd.org
3. Confidentiality: Confidentiality will be maintained to the extent required by law.

Basic Requirements of the Grievance Process:

The District's grievance process requires all of the following in accordance with 34 C.F.R. § 106.45:

1. Treating complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent and by following the grievance process before imposing any disciplinary sanctions or actions that are not supportive measures as defined in 34 C.F.R. § 106.30, against respondent.
 - a. Remedies must be designed to restore or preserve equal access to the education program or activity. These remedies may include the supportive measures defined in 34 C.F.R. § 106.30 however they do not need to be non-disciplinary or non-punitive.
2. Objective evaluation of all relevant evidence and credibility determinations are not based on a person's status as a complainant, respondent, or witness.
3. The Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution shall not have a conflict of interest or bias. All of these individuals will receive training on the definition of sexual harassment, the scope of the District' education program/activity, how to conduct an investigation and grievance process including hearings, appeal, and informal resolution process, and how to serve impartially.
 - a. In addition, decision-makers will receive training on any technology to be used at a live hearing and on issues of relevant questions and evidence.

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- b. Investigators will receive training on issues of relevance to create an investigation report that fairly summarizes relevant evidence.
- 4. A presumption that respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the process.
- 5. Prompt timelines for concluding the grievance process, filing and resolving appeal, informal resolution (if offered), and a process that allows for temporary delay of the process or extensions of time for good cause with written notice to the complainant and the respondent.
 - a. Good cause includes 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.
- 6. The range of possible disciplinary sanctions and remedies.
- 7. The standard of evidence to be used to determine responsibility is the preponderance of the evidence standard.
- 8. Includes appeal bases and procedures.
- 9. The range of supportive measures.
- 10. Does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege unless such privilege has been waived.

Supportive Measures:

The Title IX Coordinator must promptly contact the complainant to discuss supportive measures, consider the complainants' wishes regarding the supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain the process for filing a formal complaint.

Supportive measures are non-disciplinary, non-punitive individualized services that may be offered as appropriate to the complainant or respondent regardless of whether a formal complaint is filed. These measures are designed to restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party. These measures may include:

- 1. Counseling,
- 2. Extensions of deadlines or other court-related adjustments,
- 3. Modifications of work or class schedules,
- 4. Campus escorts,
- 5. Mutual contact restrictions,
- 6. Changes in work locations
- 7. Leaves of absences, and

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8. Increased security and monitoring of certain areas on campus.

Notice of Allegations:

The Title IX Coordinator, upon receipt of a formal complaint, will provide written notice to the parties who are known as required in 34 C.F.R. § 106.45(b)(2). The written notice will contain all elements required in 34 C.F.R. § 106.45(b)(2).

Dismissal of a Formal Complaint:

A formal complaint must be dismissed, if:

1. the conduct alleged in the formal complaint would not constitute sexual harassment under Title IX even if proved;
2. the conduct did not occur in the District's education program or activity; or
3. the conduct did not occur against a person in the United States.

Such a dismissal does not preclude the complaint from being addressed under another Board Policy.

A formal complaint or any allegation may be dismissed if at any time during the investigation or hearing:

1. A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint or allegation therein;
2. The respondent is no longer enrolled or employed by the District; or
3. Specific circumstance prevents the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.

Prompt written notice of dismissal and the reasons therefore will be sent simultaneously to the parties.

Consolidation of Complaints:

Complaints may be consolidated in accordance with 34 C.F.R. § 106.45(b)(4).

Informal Resolution:

The District may offer informal resolution after a formal complaint is filed but before a determination regarding responsibility is made when all the requirements of 34 C.F.R. § 106.45(b)(9) are met, including:

1. Providing the required written notice to the parties under 34 C.F.R. § 106.45(b)(9)(i);
2. Obtaining the parties' voluntary, written consent to the informal resolution process; and
3. Not offering or facilitating an informal resolution process to resolve allegations that an employee sexually harassed a student.

Informal resolution may include mediation and is not required.

Investigation:

The burden of gathering sufficient evidence to reach a determination rests with the investigator and not on the parties.

The Superintendent will designate an employee to be the investigator.

The investigator shall comply with all requirements set forth in 34 C.F.R. § 106.45(b)(5), including:

1. Provide equal opportunity for the parties to present witnesses and other evidence;
2. Not restrict the ability of either party to discuss the allegations or to gather and present relevant evidence;
3. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied by an advisor of their choice who may but is not required to be an attorney;
4. Provide written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings to parties whose participation is invited or expect with sufficient time for the party to prepare to participate;
5. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegation raised in the complaint;
 - a. Prior to completing the investigative report each party and their advisor must be sent the evidence subject to inspection and review in electronic format or hard copy.
 - b. The parties have ten (10) days to submit a written response which the investigator will consider prior to completion of the investigative report.

6. Create an investigation report that fairly summarizes relevant evidence at least ten (10) days prior to the determination of responsibility and send to each party and their advisors for their review and written response.

Determination:

The Superintendent will designate an employee to be the decision maker. The decision maker cannot be the Title IX Coordinator or the investigator.

Prior to a determination being made, the decision maker must:

1. Allow each party an opportunity to submit written, relevant questions that they want to ask of any party of witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
 - a. Questions and evidence regarding complainants' sexual predisposition or prior sexual behavior are not relevant, unless offered to provide that someone other than the respondent committed the alleged conduct or concern specific incidents of complainant's prior sexual behavior with response to the respondent and are offered to prove consent.
 - b. The decision maker will explain to the party proposing the questions any decision to exclude a question as not relevant.

The decision maker will use the standard of preponderance of the evidence in making their determination. This will be the standard of evidence for all sexual harassment complainants.

The decision maker must provide the written determination to the parties simultaneously. The written determination will be sent within sixty (60) of receipt of the complaint unless extended for good cause with written notice to the complainant and the respondent pursuant to 34 C.F.R. § 106.45.

The written determination will include the required elements in 34 C.F.R. § 106.45(b)(7), including:

1. Identification of the allegations potentially constituting sexual harassment;
2. A description of the procedural steps taken from receipt of the complaint through the determination, including any notifications to the parties, interviews, site visits, and methods used to gather evidence;
3. Findings of fact supporting the determination;

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4. Conclusions regarding the application of the District; code of conduct to the facts;
5. A statement of and rational for the results as to each allegation including a determination regarding responsibility, any disciplinary sanctions imposed on the response, and any remedies; and
6. The District's procedures and permissible basis for the complainant and respondent to appeal.

Appeals:

The District will:

1. Notify the other party in writing when an appeal is filed and will implement appeal procedures equally for both parties;
2. Ensure that the decision maker for the appeal is not the same person as the Title IX Coordinator, investigator, or decision maker that made the determination regarding responsibility or dismissal;
3. Ensure the decision maker complies with 34 C.F.R. § 106.45(b)(1)(iii);
4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenge, the outcome;
5. Issue a written decision describing the result of the appeal and the rationale for the result;
6. Provide the written decision simultaneously to both parties.

A complainant or respondent may appeal from a determination regarding responsibility or a dismissal of a complaint or any allegations therein on the following bases provided in 34 C.F.R. § 106.45(b)(8):

1. Procedural irregularity that would affect the outcome of the matter;
2. New evidence that was not reasonable available at the time the decision was made that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias.

An appeal must be submitted in writing explaining the bases for the appeal within ten (10) days of the issuance of the determination of responsibility or dismissal.

A written decision on the appeal will be provided simultaneously to both parties within twenty (20) days from receipt of the appeal.

Remedies:

The District shall provide remedies to a complainant where a determination of responsibility for sexual harassment has been made against respondent. Remedies must be designed to restore or preserve equal access to the education program or activity. These remedies may include the supportive measures defined above; however, they do not need to be non-disciplinary or non-punitive. The Title IX Coordinator is responsible for the effective implementation of any remedies.

Disciplinary Actions:

1. For Students: Disciplinary measures may include suspension or expulsion for students in grades 4-12. Other actions may include but are not limited to transfer from a class to the extent permitted by law, conference with a parent/guardian, denial of participation in extracurricular or cocurricular activities to the extent permitted by law, and positive behavior supports.
2. For Employees: Disciplinary actions may range from warnings to dismissal, depending on the severity of the misconduct.

Recordkeeping:

The Title IX Coordinator will maintain all required records under 34 C.F.R. § 106.45(b)(1), including all complaints, investigations, outcomes including supportive measures, appeals, informal resolutions, and training materials for no less than seven years.