

West Contra Costa USD

Administrative Regulation

Title IX Sexual Harassment Complaint Procedures

AR 5145.71
Students

Sexual Harassment Under Title IX

The complaint procedures described in this administrative regulation shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 (Title IX) alleging that a student was subjected to one or more of the following forms of sexual harassment: (34 CFR § 106.30)

1. A District employee conditioning the provision of a District aid, benefit, or service on the student's participation in unwelcome sexual conduct.
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to the District's education program or activity.
3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 U.S.C. § 1092 or 34 U.S.C. § 12291.

“Sexual assault” means actual or intentional physical sexual acts against a person without consent that may include: rape, rape and seduction, sodomy, lewd and lascivious acts, oral

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress. (34 U.S.C. § 12291(a)(30).)

“Without consent” or “against that person’s will” may include: force, duress, violence, fear of immediate harm, or one’s inability to consent.

The District shall respond to allegations of sexual harassment that, if true, meet the definition of sexual harassment under Title IX, when the alleged conduct occurs in the school’s education program or activity, and against a person in the United States. “Education program or activity” includes locations, events, or circumstances over which the school exercised substantial control over both thleep-1 (s)5 (m)10 (e)1 (e)1-25.3i bothe school ecep-1 .001 Tw(d c)-1 (a) ()TJ2[e)5 (r)-1 (ci)4 (sed)1

Even if the alleged victim chooses not to file a formal complaint, the Title IX Coordinator shall file a formal complaint in situations in which a safety threat exists.

The Title IX Coordinator shall dismiss a formal complaint if the alleged conduct would not constitute sexual harassment as defined in 34 CFR § 106.30, even if proved. The Title IX Coordinator shall also dismiss any complaint wherein the alleged conduct did not occur in the District's education program or activity or did not occur against a person in the United States, or wherein the complainant-victim was not participating or attempting to participate in the educational program at the time the complaint was filed. The Title IX Coordinator may dismiss a formal complaint if the complainant notifies the District in writing that the complainant would like to withdraw the complaint or any allegations in the complaint, the respondent is no longer enrolled or employed by the District, or sufficient circumstances prevent the District from gathering evidence sufficient to reach a determination with regard to the complaint. (34 CFR § 106.30(a), 34 CFR

The written decision shall be issued within 60 calendar days of the receipt of the complaint, unless extended by written agreement from both parties.

In making this determination, the decision-maker shall use the “preponderance of the evidence” standard for all formal complaints of sexual harassment. The same standard of evidence shall be used for formal complaints against students as for complaints against employees. (34 CFR § 106.45)

The written decision shall include the following: (34 CFR § 106.45)

1. Identification of the allegations potentially constituting sexual harassment as defined in 34 CFR § 106.30.
2. A description of the procedural steps taken from receipt of the formal complaint through the written decision, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held if the District includes hearings as part of the grievance process.
3. Findings of fact supporting the determination.
4. Conclusions regarding the application of the District’s code of conduct or policies to the facts.
5. A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, all corrective actions, including any disciplinary sanctions the District imposes on the respondent, and whether remedies designed to restore or preserve equal access to the District’s educational program or activity will be provided by the District to the complainant.
6. The District’s procedures and permissible bases for the complainant and respondent to appeal, as well as any civil law remedies that may be available under state or federal laws.

The written decision shall comply with the requirements outlined in the uniform complaint procedures for the issuance of an investigation report and appeal rights, as is necessary and required under the law.

Appeals

Either party may appeal the District’s decision or dismissal of a formal complaint or any allegation in the complaint, if the party believes that a procedural irregularity affected the

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
2. Ensure that the decision-maker(s) for the appeal is trained in accordance with 34 CFR § 106.45 and is not the same decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
4. Issue a written decision describing the result of the appeal and the rationale for the result.
5. Provide the written decision simultaneously to both parties.

An appeal must be filed in writing within 10 calendar days of receiving the notice of dismissal of a Title IX complaint or a written determination, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered. A written decision on the appeal shall be provided to the parties within 20 calendar days from the receipt of the appeal.

In accordance with the uniform complaint procedures, a complainant may also file an appeal of the District's written decision (referred to by the California Department of Education ("CDE") as the "Investigation Report") to CDE within 30 days from the date of the written decision.

The appeal must be signed by the complainant and specify and explain the basis for the appeal that includes at least one of the following: (1) the District failed to follow its complaint procedures; (2) the written decision (or Investigation Report) lack of material findings of fact necessary to reach a conclusion of law; (3) the material findings of fact are not supported by substantial evidence; (4) the District's legal conclusions are inconsistent with the law; and/or (5) the corrective actions, listed herein, fail to provide a proper remedy. The appeal shall be accompanied by a copy of the locally filed complaint.

The appeal should be sent to:

California Department of Education
ATTN: Office of Equal Opportunity
1430 N Street
Sacramento, CA 95814-5901

Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights with 180 days from the date of most recently alleged misconduct.

Remedies

Record-Keeping

The Superintendent or designee shall maintain for a period of seven years a record of the following:

For formal complaints, the District shall maintain record of each Title IX investigation of sexual harassment, including any determinations of responsibility, any audio or audiovisual recording and transcript if applicable, any disciplinary sanctions imposed, any remedies provided to the complainant, and any appeal or informal resolution and the results therefrom. (34 CFR § 106.45)

Where a Title IX allegation was reported, regardless of whether or not a formal complaint was filed, the District shall maintain a record of any actions, including supportive measures, taken in response to a report or formal complaint, or why it is reasonable that no supportive actions were taken, why the District's response was not deliberately indifferent, and the measures taken that were designed to restore or preserve equal access to the education program or activity.

The Superintendent or designee shall also maintain for a period of seven years all materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), and any person who facilitates an informal resolution process. The District shall make such training materials publicly available on its web site, or if the District does not maintain a web site, available
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