

Provo City School District
Policy Series 3000: Students



Policy No: 3214 P3

Sexual Harassment under Title IX

Title IX of the Education Amendments Act of 1972, 2018 states: “No person in the United States shall, on basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.”

The Provo City School District will not tolerate any form of sexual harassment at school and at school sponsored events and activities and will address all allegations of sexual harassment with a complete and thorough investigation, ensuring due process for the respondent and the complainant alike. Students and employees who feel they have been subject to sexual harassment are strongly encouraged to file a complaint in accordance with the process outlined in this procedure so the district can respond to and address all instances of sexual harassment. Employees who become aware of or suspect sexual harassment are required to report to the appropriate personnel so a thorough investigation may be conducted.

DEFINITIONS

Hereinafter, all references to defined terms throughout this procedure will be capitalized to indicate the term is defined.

1. Actual Knowledge: notice of Sexual Harassment or allegations of Sexual Harassment to any employee of the district, which triggers the district’s obligation to respond. “Notice” includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.
2. Complainant: an individual who is alleged to be the victim of conduct that may constitute Sexual Harassment
3. Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be based upon the reporting party's statement with consideration of the following factors:
 - a. The length of the relationship
 - b. The type of relationship
 - c. The frequency of interaction between the persons involved in the relationship.Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
4. Domestic Violence: includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the

victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

5. Formal Complaint: a document filed by a Complainant and signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the district investigate the allegation of Sexual Harassment. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information of the Title IX Coordinators listed in this policy and on the school district's website.
6. Respondent: an individual who has been reported to be the perpetrator of conduct that may constitute Sexual Harassment
7. Responsible: a finding, by a preponderance of the evidence, that a Respondent has engaged in Sexual Harassment. Analogous to the term "guilty" in the criminal context, or "liable" in the civil context, this term is used when a determination has been made, based on all the evidence, that the Respondent's conduct constitutes Sexual Harassment.
8. Responsible Employee: every employee of Provo City School District who observes, is informed of, or otherwise becomes aware of conduct that may constitute Sexual Harassment. Every Responsible Employee is obligated to report such conduct to his/her immediate supervisor.
9. Sexual Assault: Any sexual act directed against another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent. The following are all examples of Sexual Assault:
 - a. Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
 - b. Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
 - c. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - d. Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.
10. Sexual Harassment under Title IX: conduct on the basis of sex that satisfies one or more of the following:
 - a. A district employee conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct;
 - 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 the district's education program or activity; or

- c. Conduct that could be considered Sexual Assault, Dating Violence, Domestic Violence, and/or Stalking.
11. Sexual Misconduct: conduct of a sexual nature that violates Policy 3310 because it is behavior or threatened behavior that poses a threat to the welfare, safety, or morals of other students or school personnel, but does not rise to the level of Sexual Harassment under Title IX.
 12. Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim. Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.
 13. Supportive Measures: individualized services offered to a Complainant or a Respondent that are non-punitive, non-disciplinary unreasonably burden the other party. Supportive Measures should be offered promptly, before or after filing a Formal Complaint or when no Formal Complaint has been filed but a report has been made.
 14. Title IX Coordinators: the designated employees responsible for coordinating efforts to comply with the district's responsibilities in ensuring this policy and federal regulations are appropriately enforced.

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JURISDICTION

1. Provo City School District will address all allegations of Sexual Harassment occurring:
 - a. at all schools, and district programs and activities,
 - b. en route to school activities in Provo City School District, and
 - c. where the district exercised substantial control over both the Respondent and the context in which the reported Sexual Harassment occurs.
2. Allegations of Sexual Harassment that occurred outside the United States but as part of a District-sponsored program or activity will not be addressed in this policy but may be addressed under Policy 3310 or 3320.

3. Allegations of Sexual Harassment that originated off-campus but that have a clear nexus to school **and** which impact a Complainant's ability to effectively access and continue in their educational program **may** be addressed under this Policy.
 - a. This includes allegations of Sexual Harassment through the internet, electronic mobile devices, and/or social media platforms.
 - b. If an allegation of Sexual Harassment originating off campus is not addressed under this Policy, it may be addressed under Policy 3310 or 3320.

PROCEDURES

General Provisions

1. Complainants and Respondents are to be treated equitably by providing remedies to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent, and by following these grievance procedures before imposing any disciplinary sanction or other actions are taken against the Respondent.
2. These grievance procedures require an objective evaluation of all relevant evidence, both inculpatory evidence (shows guilt) and exculpatory evidence (shows innocence). Credibility determinations may not be based on a person's status as a Complainant, Respondent, or Witness.
3. All individuals designated as Title IX Coordinator, Investigator, Decision-Maker(s), or any person designated to facilitate an Informal Resolution Process shall:
 - a. Not have a conflict of interest or bias for or against Complainants or Respondents generally, or an individual Complainant or Respondent.
 - b. Receive training as outlined in the Training Section below.
4. A Respondent is presumed not Responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
5. The district will ensure reasonably prompt timeframes for conclusion of the grievance process, including for filing and resolving appeals and informal resolution processes. The district's grievance process may be delayed for good cause, including:
 - a. The absence of a party, a party's advisor, or a witness;
 - b. Concurrent law enforcement activity; or
 - c. The need for language assistance or accommodation of disabilities
6. The range of disciplinary sanctions for and remedies following a determination of responsibility may include:
 - a. Sanctions:
 - i. Short-term removal from school (up to 10 days),
 - ii. Long-term removal from school (more than 10 days),
 - iii. Alternative placement, and
 - iv. Termination of employment

- b. Remedies:
 - i. Counseling,
 - ii. Extensions of deadlines or other course-related adjustments,
 - iii. Modifications of work or class schedules,
 - iv. Altering work arrangements for employees or student-employees,
 - v. School safety plan,
 - vi. Mutual restrictions on contact between the parties,
 - vii. Changes in work locations,
 - viii. Leaves of absence,
 - ix. Increased security and monitoring of certain areas of the school, and
 - x. Other similar measures
7. The standard of evidence for all complaints of sexual harassment through this process is preponderance of the evidence.
8. Both the Complainant and Respondent shall have the right to appeal the Decision-Makers' decision, in accordance with the Appeals Section below.
9. Supportive Measures will be made available to the Complainant and Respondent throughout the grievance process. Examples of Supportive Measures are listed in the Procedures Section below.
10. The grievance process 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 the person holding such privilege has waived it.

Reporting a Complaint

1. A student or employee experiencing Sexual Harassment may report to any employee of the district, including directly to the Title IX Coordinator.
2. All employees of the district are required to report any allegation or observation of Sexual Misconduct and Sexual Harassment to the employee's immediate supervisor, who will report to the school principal where the Complainant is enrolled or employed.
3. The principal will follow-up with an initial inquiry to determine if the conduct, on the face of the allegations, is more likely Sexual Misconduct or Sexual Harassment.
4. If after an initial inquiry the principal determines the conduct is more likely Sexual Harassment, the principal will notify the Title IX Coordinator about the allegation.
5. The Title IX Coordinator, along with the principal, will contact the Complainant and provide information regarding:
 - a. How to file a Formal Complaint
 - b. Supportive Measures available to the Complainant, regardless of whether the Complainant files a Formal Complaint

6. A Formal Complaint may be filed directly with the Title IX Coordinator in person, by mail, or by electronic mail.

Supportive Measures

1. Supportive Measures are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party and should be designed to protect the safety of all parties or the educational environment, or deter Sexual Harassment.
2. Supportive Measures will be offered to the Complainant and the Respondent when the district learns of allegations of Sexual Harassment.
3. Supportive Measures may not be punitive or disciplinary.
4. Supportive Measures may be individualized depending on the circumstances of the Complainant and/or the Respondent.
5. Supportive Measures may include:
 - a. Counseling,
 - b. Extensions of deadlines or other course-related adjustments,
 - c. Modifications of work or class schedules,
 - d. Altering work arrangements for employees or student-employees,
 - e. School safety plan,
 - f. Mutual restrictions on contact between the parties,
 - g. Changes in work locations,
 - h. Leaves of absence,
 - i. Increased security and monitoring of certain areas of the school, and
 - j. Other similar measures.
6. The district must maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the district to provide the Supportive Measures.
7. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures with the school principal.
8. All Supportive Measures offered must be documented by the Title IX Coordinator. In the event a Complainant is NOT offered Supportive Measures under the circumstances, reasons for not offering Supportive Measures must be documented.

Formal Complaint

1. A student or employee experiencing Sexual Harassment may file a Formal Complaint by submitting a statement in writing that includes all of the following:

- a. Allegations of Sexual Harassment against a Respondent or multiple respondents
 - b. A request for an investigation
 - c. The school where the Complainant is enrolled, or, if an employee, the school or district department where the Complainant is employed
 - d. The school or district department where the Respondent is enrolled or employed
2. The Formal Complaint may be a district form or may be any other written document that includes all of the elements outlined above.
 3. A Formal Complaint may be filed by the student or the student's parents/guardians if the student is a minor. An employee is required to file his/her own Formal Complaint, unless the Title IX Coordinator chooses to file a Formal Complaint on behalf of the employee.
 4. The Title IX Coordinator may file a Formal Complaint on behalf of a student or an employee in the following circumstances:
 - a. Where Complainant refuses to file Formal Complaint but the allegation on its face meets the definition of Sexual Harassment and meets all the jurisdictional requirements
 - i. In this case, the Title IX Coordinator should file a Formal Complaint.
 - b. Where there is a physical threat to Complainant but Complainant cannot proceed
 - c. Where there is an institutional problem

Emergency Removal

1. A Respondent may be removed from Respondent's school, program, or activity on an emergency basis if the district determines, based on an individualized safety and risk analysis, 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.
2. A Respondent who is removed under this provision shall be given notice and an opportunity to challenge the decision immediately following the removal.

Dismissal of Complaint

1. A Formal Complaint must be dismissed if:
 - a. The alleged conduct does not constitute Sexual Harassment as defined in this Policy
 - i. An allegation on its face may not constitute Sexual Harassment, in which case the Formal Complaint must be dismissed; or
 - ii. It may be determined after an investigation in accordance with the procedures outlined in this Policy that an allegation does not constitute Sexual Harassment, in which case the Formal Complaint must be dismissed.
 - b. The alleged conduct did not occur in the district's education program or activity
 - c. The alleged conduct did not occur in the United States
 - d. The Complainant is not enrolled or employed, or seeking to be enrolled or

employed at the district

2. Formal Complaint **may** be dismissed if:
 - a. The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw his/her Formal Complaint;
 - b. Respondent is no longer enrolled in or employed by the district; or
 - c. Specific circumstances prevent the district from gathering the evidence sufficient to reach a determination.
3. If a Formal Complaint is dismissed, written notice of the dismissal and reasons for the dismissal must be promptly sent to the Complainant and the Respondent simultaneously.
4. Nothing in this Policy prohibits the district from pursuing an investigation under a different district policy and/or imposing appropriate sanctions against a Respondent if a Formal Complaint is dismissed for failure to constitute Sexual Harassment but where the conduct nevertheless violates a district policy.
5. A Complainant may appeal a dismissal by following the procedures outlined in section Appeals section of this procedure.

Notice of Complaint

1. Following the filing of a Formal Complaint, and absent a dismissal, notice must be sent to both parties.
2. The notice must include:
 - a. Complainant's specific allegations, including:
 - i. The name of the Complainant
 - ii. A description of the alleged harassment
 - iii. A range of dates during which the harassment is alleged to have occurred
 - iv. All the policies that were violated (including Safe Schools, Non-Discrimination, Bullying, Retaliation, Code of Conduct, Title IX Policy, etc.)
 - b. Presumption of no responsibility for the Respondent
 - c. Notice of when interviews will be held, including:
 - i. The date, time, and location of the meeting (no less than two days from the date the Notice was received by the parties)
 - ii. The purpose of the meeting
 - iii. The participants expected at the meeting
 - iv. A provision that party may bring an advisor (may be an attorney) to the meeting
 - v. A provision that party may bring any documents, evidence, or other information the party would like the investigator to consider
 - d. Information regarding the process
 - e. The standard of evidence that will be applied
 - f. Directives not to retaliate (for the Respondent)

g. Information about and offer of the Informal Resolution Process

Informal Resolution

1. Provo City School District's primary Informal Resolution Arbitrators will be School or District Administrators and may vary depending on whether the alleged harassment involves students or employees or both.
 - a. All arbitrators will be trained to conduct Title IX Informal Resolutions.
2. Following the filing of a Formal Complaint, the Complaint and the Respondent will be given the opportunity to participate in an Informal Resolution Process.
3. The Informal Resolution Process may be facilitated at any time after a Formal Complaint has been filed and prior to a determination regarding responsibility with the voluntary written consent of both parties.
4. If parties request the Informal Resolution Process, both parties must be provided written notice and give consent to participate that includes:
 - a. The allegations
 - b. The requirements of the process, including what information and documents will be shared with the other party,
 - c. The right to withdraw/resume the Informal Resolution Process at any time prior to reaching a resolution,
 - d. The notice that upon signing an informal resolution agreement, the parties will be bound by its terms and cannot opt for a formal grievance process based on the conduct that is the subject of the resolution,
 - e. Circumstances which resume the Formal Complaint arising from the same allegations, and
 - f. Consequences, including records kept and shared.
5. The Informal Resolution Process may **not**:
 - a. Be required as a condition of enrollment or employment
 - b. Be offered or facilitated when the allegations are of an employee sexually harassing a student
6. If the Informal Resolution Process fails, the Formal Complaint will resume.

Investigation

1. Provo City School District's primary investigators will be District or School Administrators and may vary depending on whether the alleged harassment involves students or employees or both.
 - a. All investigators will be trained to conduct Sexual Harassment Investigations.
2. Upon receipt of a Formal Complaint, the investigator/s will provide the Notice described in the Notice section of this procedure.

3. The investigator/s will meet first with the Complainant to hear first-hand the allegations listed in the Formal Complaint.
 - a. The investigator/s will ask for documentary evidence and witnesses from the Complainant.
 - b. An advisor may attend any interview with Complainant but will be present only for support and may not speak for the Complainant.
 - c. The investigator/s will take detailed notes and may record the conversation with consent from the Complainant.
4. The investigator/s will then meet with the Respondent to hear Respondent's response to the allegations.
 - a. The investigator/s will ask for documentary evidence and witnesses from the Respondent.
 - b. An advisor may attend any interview with the Respondent but will be present only for support and may not speak for the Respondent.
 - c. The investigator/s will take detailed notes and may record the conversation with consent from the Respondent.
5. The investigator/s may interview other students, employees, and parents who are not the Complainant or the Respondent and may record, take statements, or document the interviews.
6. The investigator/s will review any relevant security camera footage or other evidence maintained on the district computer network or computers or devices.
7. The investigator/s will comply with the district's Search and Seizure Policy (3230) in all searches conducted in the course of the investigation.
8. After investigation, the investigator/s will send a summary of the evidence to both parties for inspection in an electronic format or hard copy
 - a. Both parties have ten (10) calendar days to respond to the summary of the evidence.
 - b. The investigator/s shall consider the responses by both parties, but need not adopt the responses.
9. Following the ten-day period for responses, the investigator/s shall draft a final investigative report which shall include:
 - a. A summary of evidence and
 - b. Findings of fact
10. The investigator/s shall share the Final Investigative Report to both parties and the Decision-Making Team.

Decision-Making

1. The Decision-Making Team is comprised of District Directors and may vary depending on whether the alleged harassment involves students or employees or both.
 - a. All members of the Decision-Making Team will be trained to conduct Sexual Harassment Decision-Making.
2. The Decision-Making Team shall notify both parties that they have ten (10) calendar days to submit cross-examination questions in writing to the other party and to witnesses.
 - a. The Decision-Making Team shall review questions submitted for relevance and appropriateness and shall determine which questions to forward to the other party and witnesses.
 - b. Both parties shall have an opportunity to respond to the questions forwarded by the Decision-Making Team.
 - c. The Decision-Making Team will determine a deadline for when the responses are to be returned.
3. The Decision-Making Team will review any responses to the approved cross-examination questions and the evidence in the Final Investigative Report (including any relevant materials and artifacts from the Investigation) to determine whether a Respondent by a preponderance of evidence is responsible or not for engaging in Sexual Harassment, as defined by the district's Sexual Harassment under Title IX policy.
4. The Decision-Making Team shall issue a written determination simultaneously to both parties, which will include:
 - a. Identification of allegations
 - b. A description of procedural steps taken from receipt of the formal complaint through the investigation, including methods used to gather evidence;
 - c. Findings of fact supporting the determination;
 - d. Conclusions about whether the District's Sexual Harassment under Title IX policy was violated;
 - e. Statement of, and rationale for, the result as to each allegation, including:
 - i. A determination regarding the responsibility
 - ii. Any disciplinary sanctions imposed on the Respondent;
 - iii. Any remedies to restore or preserve equal access to the district's education program or activity for the Complainant; and
 - f. The process by which the written determination may be appealed by either party as outlined in the Appeals section of this procedure.

Appeals

1. A request for an appeal must be submitted to the Title IX Coordinator within five (5) business days of receiving the written determination from the Decision-Making Team.
2. The Title IX Coordinator will forward the appeal to the Superintendent's Designee who will grant the requesting party an appeal on the following bases:
 - a. The requesting party presents evidence of procedural irregularity that affected the outcome of the matter;

- b. The requesting party presents new evidence that was not reasonably available at the time of the determination was made that could affect the outcome of the matter; and
 - c. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against the requesting party such that it affected the outcome of the matter.
3. The Superintendent's Designee may grant the requesting party an appeal on additional bases in the Designee's discretion.
4. If an appeal is granted, both parties will be given a reasonable, equal opportunity to submit a written statement in support of, or challenging the outcome.
5. Upon review of the written statements, the Superintendent's Designee will issue a written decision describing the result of the appeal and the rationale for the result and will provide the written decision simultaneously to both parties within a reasonable time frame.
6. The written decision on the appeal may take one of the following three positions:
 - a. Affirm the Decision-Making Team's decision
 - b. Repeal the Decision-Making Team's decision
 - c. Remand the Decision-Making Team's decision.

Records Retention

1. All records created during the investigative process must be maintained seven (7) years or two (2) years after the student graduates (whichever is longer). All Title IX records are generally protected under Family Educational Rights and Privacy Act (FERPA).
2. All records include:
 - a. Any determination regarding responsibility
 - b. Any disciplinary sanctions imposed on the respondent
 - c. Any remedies provided to the Complainant designed to restore or preserve equal access to the district's education program or activity
 - d. Any appeal and the result therefrom
 - e. Any informal resolution and the result therefrom
 - f. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process
 - g. Records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Sexual Harassment that document the basis for the district's conclusion.

Training

1. All Title IX Coordinators, investigators, decision-makers, and any person who facilitates

an informal resolution process must receive training on the following:

- a. The definition of sexual harassment
 - b. The scope of the district's education program or activity
 - c. How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution process, as applicable
 - d. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias.
2. All decision-makers must receive training on the issues of relevance of questions and evidence.
 3. All investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
 4. All training materials must promote impartial investigations and must not rely on sex stereotypes.
 5. The district will make all its training materials publicly available on its website.

Retaliation

1. Retaliation Prohibited
 - a. No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceedings.
 - b. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sex 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, for the purpose of interfering with any right or privilege secured by Title IX or this Policy, constitutes retaliation.
 - c. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.
2. Consequences for Retaliation
 - a. An individual who engages in retaliation as described in this Policy will be disciplined in accordance to District Policy 3320.
 - b. Consequences for retaliation apply equally to any individual who engages in retaliation, and not just the Respondent.

Approved by the District Council on November 15, 2021

References: Title IX, 20 U.S.C. §1681 and 34 C.F.R. Part 106