



Sexual Harassment/ Title IX Grievance Process

Vantage Career Center

Book Policy Manual

Section 2000 Program

Title SEXUAL HARASSMENT/TITLE IX GRIEVANCE PROCESS

Code po2266

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2266 - SEXUAL HARASSMENT/TITLE IX GRIEVANCE PROCESS

Introduction

The Board of Education of the Vantage Career Center (hereinafter referred to as “the Board” or “the District”) does not discriminate on the basis of sex (including sexual orientation or gender identity), in its education programs or activities, and is required by Title IX of the Education Amendments Act of 1972, and its implementing regulations, not to discriminate in such a manner. The requirement not to discriminate in its education program or activity extends to admission and employment. The Board is committed to maintaining an education and work environment that is free from discrimination based on sex, including sexual harassment.

The Board prohibits Sexual Harassment that occurs within its education programs and activities. When the District has actual knowledge of Sexual Harassment in its education program or activity against a person in the United States, it shall promptly respond in a manner that is not deliberately indifferent, i.e., that is not clearly unreasonable in light of the known circumstances.

Pursuant to its Title IX obligations, the Board is committed to eliminating Sexual Harassment and will take appropriate action when an individual is determined responsible for violating this policy. Board employees, students, third-party vendors and contractors, guests, and other members of the School District community who commit Sexual Harassment are subject to the full range of disciplinary sanctions set forth in this policy. The Board will provide persons who have reported or experienced Sexual Harassment ongoing supportive measures and remedies as applicable and reasonably necessary to restore or preserve access to the District’s education programs and activities.

Coverage

This policy applies to Sexual Harassment that occurs in the United States and within the District’s education programs and activities, and includes locations, events, and circumstances

over which the District exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs, and any building owned or controlled by a student organization recognized by the District. In some circumstances, the District may not have the authority to impose disciplinary action. Where the District does not have disciplinary authority, the District will seek to meet its Title IX obligations by evaluating the reported conduct, providing reasonable supportive measures, assisting the Complainant in identifying external reporting options, and taking reasonably available steps to end any Sexual Harassment or misconduct.

Conduct to which this policy does not apply may also be prohibited by the Student Code of Conduct, Board policies and administrative guidelines, rules, and handbooks applicable to employees (including the *Licensure Code of Professional Conduct for Educators*), or applicable State and/or Federal laws and regulations.

Definitions

Words used in this policy shall have those meanings defined herein; words not defined herein shall be construed according to their plain and ordinary meanings.

Sexual Harassment: “Sexual Harassment” means conduct on the basis of sex that satisfies one or more of the following:

- A. A Board employee conditioning the provision of an aid, benefit, or service of the District on an individual’s participation in unwelcome sexual conduct (often called “*quid pro quo*” harassment);
- 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. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)A(v), or “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

Sexual harassment may involve the behavior of a person of any gender against a person of the same or another gender. Examples of sexual harassment may include, but are not limited to, the following actions, provided such actions satisfy the above-described definition of sexual harassment:

- A. Unwelcome sexual propositions, invitations, solicitations, and/or flirtations;
- B. Unwanted physical and/or sexual contact;

- C. Threats or insinuations implying that a person's conditions of education or employment may be adversely affected by not submitting to sexual advances;
- D. Unwelcome sexual verbal expressions, including graphic sexual commentaries about a person's body, dress, appearance, or sexual activities; unwelcome sexually degrading language, profanity, jokes, or innuendoes;
- E. Sexually suggestive objects, pictures, graffiti, videos, posters, audio recordings or literature;
- F. Unwelcome and inappropriate touching, patting, or pinching;
- G. Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities;
- H. Speculations about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history;
- I. Giving unwelcome personal gifts such as lingerie that suggests the desire for a romantic relationship;
- J. Leering or staring at someone in a sexual way, such as staring at a person's breasts, buttocks, or groin; and
- K. Other inappropriate boundary invasions, as described in the District's Administrative Guidelines

“Sexual assault” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI.

"Domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime occurred; or 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 in which the crime occurred.

"Dating violence" means 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 determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

"Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

Complainant: “Complainant” means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

Consent: "Consent" means words or actions that a reasonable person would understand as agreement to engage in the sexual conduct at issue. A person may be incapable of giving consent because of age, status, or temporary or permanent mental or physical incapacity.

Respondent: “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

Formal Complaint: “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(s) of Sexual Harassment. At the time of filing a Formal Complaint with the District, a Complainant must be participating in or attempting to participate in the District’s education program or activity. A “document filed by a Complainant” means a document or electronic submission that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or a party to the Formal Complaint and must comply with this policy, including by not having a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent.

Actual Knowledge: “Actual knowledge” means notice of Sexual Harassment or allegations of Sexual Harassment to the District’s Title IX Coordinator, or any District official who has authority to institute corrective measures on behalf of the Board. This standard is not met when the only District official with actual knowledge is the Respondent. “Notice” includes, but is not limited to, a report of Sexual Harassment to the Title IX Coordinator.

Supportive Measures: “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 the District’s education 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, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, school/campus escort services, mutual restrictions of contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus (including school buildings and facilities), referral to Employee Assistance Program, and other similar measures.

Day(s): Unless expressly stated otherwise, the term “day” or “days” as used in this policy means business day(s) (i.e., a day(s) that the Board office is open for normal operating hours, Monday – Friday, excluding State-recognized holidays).

The District will provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews or other meetings, with sufficient time for the party to prepare to participate.

Both parties shall have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.

Prior to completion of the investigative report, the District will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report. The District will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

At the conclusion of the investigation, the investigator shall create an investigative report that fairly summarizes relevant evidence, including both inculpatory and exculpatory evidence, and provides credibility determinations that are not based on a person's status as a Complainant, Respondent, or witness. The investigator must send an electronic or hard copy of the report to each party and the party's advisor, if any, for their review and written response, and will also send a copy to the decision maker and Title IX Coordinator. The investigator will send the investigative report to the parties in an electronic format or a hard copy, at least ten (10) calendar days prior to a hearing or the decision-maker(s) issuing a determination regarding responsibility.

Determination of Responsibility

The District shall appoint a decision-maker(s) to conduct a hearing and issue a determination of responsibility. The decision-maker(s) cannot be the same person(s) as the Title IX Coordinator(s) or the investigator(s), and may not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent. The decision-maker must also receive appropriate training under the policy. Both parties shall be notified of the identity of the decision-maker.

After the investigator sends the investigative report to the parties and the decision-maker(s), and prior to the decision-maker(s) issuing a determination of responsibility, the decision-maker(s) will conduct a hearing.

At the hearing, the decision-maker(s) shall permit each party's advisor to ask the other party(ies) and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally; notwithstanding the

discretion of the District to otherwise restrict the extent to which advisors may participate in the proceedings.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

If a party does not have an advisor present at the hearing, the District will provide, without fee or charge to that party, an advisor of the District's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

If a party or witness does not submit to cross-examination at the hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

Hearings may be conducted with all parties physically present in the same geographic location or, at the discretion of the District, any or all parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other. At the request of either party, the District shall provide for the hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or witness answering questions. The District will create an audio or audiovisual recording, or transcript, of any hearing and make it available to the parties for inspection and review.

Determination regarding responsibility: The decision-maker(s) will issue a written determination regarding responsibility. To reach this determination, the decision-maker(s) must apply the preponderance of the evidence standard and must consider the totality of all available evidence, from all relevant sources.

The written determination will include the following content:

- A. identification of the allegations potentially constituting Sexual Harassment pursuant to this policy;

- B. 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, methods used to gather other evidence, and hearings held;
- C. findings of fact supporting the determination;
- D. conclusions regarding the application of the applicable code of conduct to the facts;
- E. a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the decision-maker(s) is recommending that the District impose on the Respondent(s), and whether remedies designed to restore or preserve equal access to the District's education program or activity should be provided by the District to the Complainant(s); and
- F. the procedures and permissible bases for the Complainant(s) and Respondent(s) to appeal.

The decision-maker(s) will provide the written determination simultaneously to both parties. The decision-maker(s) must also provide a copy of the written determination to the Title IX Coordinator.

Appeal

Both parties have the right to file an appeal from a determination regarding responsibility, or from the Title IX Coordinator's dismissal of a Formal Complaint or any allegations therein, on the following bases:

- A. Procedural irregularity that affected the outcome of the matter (e.g., material deviation from established procedures);
- B. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal 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 complainants or respondents generally or the individual Complainant(s) or Respondent(s) that affected the outcome of the matter.

Any party wishing to appeal the decision-maker(s)'s determination of responsibility, or the Title IX Coordinator's dismissal of a Formal Complaint or any allegations therein, must submit a written appeal to the Title IX Coordinator within five (5) days after receipt of the decision-maker(s)'s determination of responsibility or the Title IX Coordinator's dismissal of a Formal Complaint or any allegations therein.

As to all appeals, the District will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.

The decision-maker(s) for the appeal shall not be the same person(s) as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator(s). The decision-maker(s) for the appeal shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant(s) or Respondent(s) and shall receive the same training as required of other decision-makers. Both parties shall be notified of the identity of the decision-maker(s) for the appeal.

Both parties shall have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

The parties' written statements in support of, or challenging, the determination of responsibility must be submitted to the Title IX Coordinator and the appeals decision-maker(s) within two (2) business days after the Title IX Coordinator provides notice to the non-appealing party of the appeal.

The decision-maker(s) for the appeal shall issue a written decision describing the result of the appeal and the rationale for the result. The original decision-maker(s)' determination of responsibility will stand if the appeal request is not filed in a timely manner or the decision-maker for the appeal does not find clear error and/or a compelling rationale for overturning or modifying the original determination. The written decision will be provided to the Title IX Coordinator and simultaneously to both parties. The written decision will be issued within ten (10) days of when the parties' written statements were submitted.

The determination of responsibility associated with a Formal Complaint, including any remedies and disciplinary sanctions, becomes final when the time for filing an appeal has passed or, if an appeal is filed, at the point when the decision-maker(s) for the appeal's decision is delivered to the Complainant and the Respondent. No further review beyond the appeal is permitted.

Sanctions and Remedies

If Respondent is determined to be responsible for Sexual Harassment, the District will provide remedies to the Complainant that are designed to restore or preserve equal access to the District's education programs or activities. Such remedies may include supportive measures, but need not be non-disciplinary, non-punitive, or avoiding burdening the Respondent. The Title IX Coordinator is responsible for effective implementation of any remedies.

Staff members who engage in conduct that violates Title IX as set forth in this Policy are subject to disciplinary action, up to and including termination of employment, consistent with any applicable collective bargaining agreement.

Students who engage in conduct that violates Title IX as set forth in this Policy are subject to disciplinary action, up to and including suspension, expulsion, and permanent exclusion.

The Title IX Coordinator is responsible for effective implementation of any remedies.

Retaliation

Neither the Board nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this policy, or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct 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, for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this policy, constitutes retaliation. Retaliation against a person for making a report of Sexual Harassment, filing a Formal Complaint, or participating in an investigation and/or hearing is a violation of this policy that will result in disciplinary sanctions/consequences and/or other appropriate remedies.

Complaints alleging retaliation may be filed under Policy 2260 - Nondiscrimination and Access to Equal Educational Opportunity.

The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited under this policy.

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 policy shall 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.

Confidentiality

The District shall not restrict the right of any party to discuss the allegations under investigation or to gather and present relevant evidence.

The District will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of Title IX and its implementing regulations, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder (i.e., the District's obligation to maintain confidentiality shall not impair or otherwise affect the Complainant's and Respondent's receipt of the information to which they are entitled under this policy).

Training

The District's Title IX Coordinator, along with any investigator(s), decision-maker(s), or person(s) designated to facilitate an informal resolution process, must receive training on:

- A. the definition of Sexual Harassment (as that term is used in this policy);
- B. the scope of the District's education program or activity;
- C. how to conduct an investigation and implement the grievance process that includes hearings, appeals and informal resolution processes, as applicable; and
- D. how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interests, and bias.

All decision makers must receive training on issues of relevance, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in this policy. All investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in this policy.

Any materials used to train Title IX Coordinator(s), investigator(s), decision-maker(s), and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment.

All Board employees are trained concerning their legal obligation to report Sexual Harassment to the Title IX Coordinator. This training includes practical information about how to identify and report Sexual Harassment.

Recordkeeping

As part of its response to alleged violations of this policy, the District shall create, and maintain for a period of seven (7) calendar years, records of any actions, including any supportive measures, taken in response to a report or Formal Complaint of Sexual Harassment. In each instance, the District shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the District's education program or activity. If the District does not provide a Complainant with supportive measures, then the District will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken.

The District shall maintain for a period of seven (7) calendar years the following records:

- A. each Sexual Harassment investigation including any determination regarding responsibility, any audio or audiovisual recording or transcript that is made of any hearing,, any disciplinary sanctions recommended and/or imposed on the Respondent(s), and any remedies provided to the Complainant(s) designed to restore or preserve equal access to the District’s education program or activity;
- B. any appeal and the result therefrom;
- C. any informal resolution and the result therefrom; and
- D. all materials used to train Title IX Coordinators, investigators, decisionmakers, and any person who facilitates an informal resolution process.

The District will make its training materials publicly available on its website.

The Board retains discretion to appoint suitably qualified persons who are not Board employees to fulfill any function of the Board under this policy, including, but not limited to, Title IX Coordinator, investigator, decision-maker, decision-maker for appeals, facilitator of informal resolution processes, and advisor.

The provisions of this policy are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, the Board retains discretion to revise this policy at any time, and for any reason. The Board may apply policy revisions to an active case provided that doing so is not clearly unreasonable in the light of the circumstances.

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Legal

R.C. 3313.207/208/209, 5104

20 U.S.C. 1681 et seq., Title IX of the Education Amendments of 1972 (Title IX)

20 U.S.C. 1400 et seq., The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)

42 U.S.C. 2000c et seq., Title IV of the Civil Rights Act of 1964

42 U.S.C. 2000d et seq.

42 U.S.C. 2000e et seq.

42 U.S.C. 1983

34 C.F.R. Part 106

OCR’s Revised Sexual Harassment Guidance (2001)

20 U.S.C. 1092(F)(6)(A)(v)

34 U.S.C. 12291(a)(10)

34 U.S.C. 12291(a)(8)

34 U.S.C. 12291(a)(30)