

## **Title IX Sexual Harassment Grievance Process**

This Policy Regulation expresses the District's commitment to an environment free from sexual harassment and conforms to legal requirements under Title IX of the Education Amendments of 1972 ("Title IX"), a civil rights law that prohibits sex discrimination by recipients of federal financial assistance, including the District. All students and employees are subject to this Policy Regulation. This Policy Regulation only applies to sexual harassment covered under Title IX. Sexual harassment and other sexual misconduct not covered under Title IX may still constitute misconduct that is incompatible with District's standards and may be addressed by the other applicable District policies or procedures.

### **Definitions**

- **"Actual knowledge"** means notice of sexual harassment or allegations of sexual harassment to any District employee. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the District with actual knowledge is the respondent.
- **"Advisor of choice"** means a person the complainant or respondent selects to be present during any grievance proceeding, including related meetings or proceedings.
- **"Complainant"** means an individual who is alleged to be the target of conduct that could constitute sexual harassment, regardless of whether the individual filed the formal complaint.
- **"Decisionmaker"** means an individual responsible for reaching a determination regarding responsibility in a formal complaint. The Decisionmaker cannot be the Title IX Coordinator or the Investigator assigned to the same formal complaint.
- **"Education program or activity"** means locations, events, or circumstances over which the District exercises substantial control over both the complainant and respondent and the context in which the sexual harassment occurs.
- **"Formal complaint"** means a document filed by a complainant (or the complainant's parent or guardian with the legal authority to act on behalf of the complainant) or signed by the Title IX Coordinator, alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment.
- **"Investigator"** means an individual who investigates a formal complaint. The Investigator may also be the Title IX Coordinator but cannot be the Decisionmaker.

- **“Respondent”** means an individual who has been reported to be the perpetrator of conduct that could constitute sex-based discrimination or sexual harassment.
- **“Sexual harassment”** means conduct on the basis of sex that satisfies one or more of the following:
  1. An employee of the District conditions the provision of an aid, benefit, or service of the District on an individual’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 person equal access to the District’s education program or activity;
  3. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “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).
- **“Supportive measures”** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge, to the complainant or respondent, before or after the filing of a formal complaint or where no formal complaint has been filed.
- **“Title IX Coordinator”** means the employee designated by the District to coordinate its efforts to comply with the District’s responsibilities under Title IX.

## **Title IX Sexual Harassment Prohibited**

The District—as required by Title IX—prohibits sexual harassment in the District’s education program or activity against a person in the United States.

## **Reporting Sexual Harassment**

- *Students and Nonemployees.* The District encourages all individuals participating in its education program or activity to report sexual harassment or allegations of sexual harassment (whether or not they are the alleged victim of the conduct that could constitute sexual harassment) to the Title IX Coordinator or other District employees.
- *Employees.* District employees who receive reports of sexual harassment must immediately contact the Title IX Coordinator.
- *Reporting sexual harassment to Title IX Coordinator.* If you wish to report sexual harassment to the Title IX Coordinator, you may do so in person, by mail, by telephone, or by email, using the contact information listed for the Title IX

Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator. Title IX Coordinator:

**Kathleen Fitzsimmons, HR/Title IX Coordinator**

328 West 5th Street

Leadville, CO 80461

Office: 719-486-6811

kfitzsimmons@lakecountyschools.net

## **Response to Reports of Sexual Harassment**

If the District has actual knowledge of sexual harassment that occurs in the District's education program or activity in the United States, the District's Title IX Coordinator will contact the complainant within 3 business days. The Title IX Coordinator will discuss the availability of supportive measures and explain the process for filing a formal complaint.

## **Supportive Measures**

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Supportive measures may include, but are not limited to:

1. counseling;
2. extensions of deadlines or other course-related adjustments;
3. modifications of work or class schedules;
4. excused absences;
5. individualized supervision during passing periods or other unstructured times or activities;
6. mutual restrictions on contact between the parties; and
7. increased security and monitoring of certain areas of the campus, and other similar measures.

*Confidentiality.* Any supportive measures provided to the complainant or respondent will remain confidential to the extent that maintaining such confidentiality would not impair the ability of the District to provide supportive measures.

## **Emergency Removal**

Student-respondents may be removed from the District's education program or activity on an emergency basis. If the Title IX Coordinator determines—after an individualized assessment—that the student-respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment.

The District will provide the student-respondent with notice and an opportunity to challenge the decision immediately following the removal.

## **Administrative Leave**

An employee-respondent may be placed on administrative leave during the pendency of a grievance process, at the District's sole discretion.

## **Filing a Formal Complaint**

- *Complainant may file a formal complaint.* A complainant (or a complainant's parent or guardian with the legal authority to act on behalf of the complainant) may file a formal complaint with the Title IX Coordinator, requesting the District investigate and adjudicate a report of sexual harassment. A formal complaint requires a physical or digital signature by the complainant, or an indication that the complainant is the person filing the formal complaint. The District will provide assistance in writing and filing complaints if needed. At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in the District's education program or activity.
- *Title IX Coordinator may file a formal complaint.* If the complainant chooses not to file a formal complaint, the District may still initiate the grievance process if the Title IX Coordinator signs the formal complaint. The Title IX Coordinator will only sign a formal complaint after considering the complainant's wishes and evaluating whether an investigation is clearly unreasonable in light of the specific circumstances. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.
- *Consolidating multiple complaints.* The District may consolidate formal complaints where the allegations of sexual harassment arise out of the same facts or circumstances.

## **Time Limit to File a Formal Complaint**

There is no time limit for filing a formal complaint of sexual harassment. However, complainants should report their allegations as soon as possible to maximize the District's ability to respond promptly and effectively. Delayed reporting often results in, among other

things, the loss of relevant evidence and faded and unreliable memories. It also impairs the District's ability to summon witnesses, assess evidence, and, if appropriate, adjudicate claims and impose sanctions and other remedies.

## **Dismissal of a Formal Complaint**

### Mandatory Dismissal

The Title IX Coordinator will dismiss a formal complaint for Title IX purposes if the allegations in the formal complaint:

1. do not meet the definition of sexual harassment;
2. did not occur in the District's education program or activity;
3. did not occur against a person in the United States; or
4. if, at the time of filing a formal complaint, the complainant is not participating in or attempting to participate in the District's education program or activity.

When a formal complaint is dismissed, the dismissal does not preclude action under another provision of the District's code of conduct.

### Discretionary Dismissal

The District may, in its discretion, dismiss a complaint if:

1. the complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or some of its allegations;
2. the respondent is no longer enrolled or employed by the school;
3. or specific circumstances prevent the school from gathering evidence sufficient to reach a determination about the allegations.

### Notice of Dismissal and Right to Appeal

Upon dismissal of a formal complaint, the Title IX Coordinator will simultaneously send written notice to the parties, stating the reasons for the dismissal. Both parties have a right to appeal this decision in accordance with the procedures specified in the "Appeal Process" section below.

A dismissal does not prohibit the complainant from pursuing other remedies under state or federal law or local board Policy Regulation, nor does it prohibit the District from offering supportive measures or from addressing the allegations in any manner the District deems appropriate.

## Written Notice of Allegations

Within 5 business days of receiving a formal complaint, the Title IX Coordinator will provide a written notice of the allegations simultaneously to both parties. The Notice of Allegations will include the District's grievance process, including any informal resolution process, a statement that the respondent is presumed not responsible for the alleged conduct until a determination is made at the end of the grievance process, a statement that parties may have an advisor of their choice who may be, but is not required to be an attorney, and an assurance that both parties will receive due process including a right to review and present evidence. The parties will have at least 3 days from the day the written notice is sent to prepare for an initial interview.

If the District, at any point, starts to investigate allegations that are materially beyond the written notice. The District will provide a supplemental written notice describing the additional allegations to be investigated.

## Options for Resolving a Formal Complaint

There are two ways to options to resolve a formal complaint:

1. **Formal Grievance Process.** The formal grievance process involves a full investigation and adjudications as described in "Formal Grievance Process" below.
2. **Informal Resolution Process.** At the District's discretion, the parties may also be offered the opportunity to participate in an informal resolution process as opposed to the more formal grievance process. The informal resolution process does not involve a full investigation. Participation in the process is voluntary. For more information on the informal resolution process see "Informal Resolution Process" below.

## Formal Grievance Process

After a formal complaint is filed, the grievance process will begin (unless the parties are eligible and willing to participate in an informal resolution process). The District's grievance process treats complainants and respondents equitably by providing remedies to a complainant when a respondent is found responsible, and by following a grievance process that complies with Title IX before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent. As part of this process, a respondent is presumed not to have violated the Policy Regulation, and a determination regarding responsibility is made only at the conclusion of the grievance process.

## Timeframe

- **General timeframe.** The District is committed to providing a prompt, impartial, and thorough investigation and resolution that is consistent with Title IX. The

complainant and respondent will be kept apprised of the investigation's status and anticipated timeframes. The grievance process, in most cases, takes between 60 to 90 days to complete.

- *Delay or extension for good cause.* The District may delay or extend timeframes for good cause. Good cause may include, but is not limited to, the 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. If the grievance process must be delayed or extended, the Title IX Coordinator will provide the complainant and respondent with a written notice.

### **Conflicts of Interest**

Any individual designated by the District as a Title IX Coordinator, investigator, or decisionmaker may not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. If the Title IX Coordinator, investigator, or decisionmaker has a conflict of interest, the affected party has grounds for an appeal.

### **Right to an Advisor of Choice**

Each party is entitled to an adviser of their choice during the process. The advisor may be present during any grievance proceeding, including related meetings or proceedings, but may not speak or otherwise participate.

### **Expectation of Privacy**

All participants involved in the grievance process are expected to respect the seriousness of the matter and the privacy of the individuals involved. The school's expectation of privacy during the process should not be understood to limit any legal rights of the parties during or after the resolution. All other conditions for disclosure of records and outcomes are governed by the school's obligations under the Family Educational Rights and Privacy Act (FERPA), any other applicable privacy laws, and professional ethical standards.

### **Prohibition on Knowingly Making False Statements**

The District prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

### **Investigation Procedures**

All Title IX investigations will be conducted in a prompt, thorough, and fair and impartial manner. The investigative process will generally include: (1) interviewing the complainant; (2) interviewing the respondent; (3) interviewing witnesses; (4) collecting evidence and objectively evaluating whether the evidence is relevant; and (5) preparing an investigative report that fairly summarizes relevant evidence.

### Interviewing Parties and Witnesses

The District will provide written notice to parties and witnesses before the Investigator conducts an interview with the date, time, location, participants, and purpose for the meeting. The parties will have at least 3 days to prepare to participate. At the interview, or any other meeting or related proceeding, the complainant or respondent may be accompanied by their advisor. However, the advisor may not participate in the meeting. The District may conduct follow-up interviews with parties and witnesses, as necessary.

### Collecting Evidence

- *The District bears the burden of gathering evidence.* The District is responsible for gathering evidence sufficient to reach a determination. However, the parties will also have an equal opportunity to: present witnesses, present inculpatory or exculpatory evidence, and inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint.
- *The District will not collect medical records* The District will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the District obtains that party's voluntary, written consent to do so.
- *The District will not collect privileged information.* The District also will 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 the privilege.

### Preparing the Investigative Report

- *Parties may review evidence before the Investigator completes the investigative report that fairly summarizes the evidence.* Prior to completing the investigative report, the Investigator will send to each party and the party's advisor, if any, the evidence directly related to the allegations in the formal complaint in an electronic format or a hard copy, and the parties will have 10 days to submit a written response, which the Investigator will consider. The Investigator will then create an investigative report that fairly summarizes all relevant evidence. The Investigator is ultimately responsible for determining what evidence is relevant.
- *Parties will have 10 days to review investigative report.* Ten days prior to submitting the investigative report to the Decisionmaker, the District will send the investigative report to each party and the party's advisor, if any, in an electronic format or a hard



copy for their review and written response. If either party wishes to respond, they must do so during this 10-day review period.

### **Determination Regarding Responsibility**

Following the 10-day review period, the Investigator will submit the investigative report and all relevant evidence to the Decisionmaker for their review. The parties will also receive copies of the investigative report.

#### Questioning of Parties and Witnesses

After the review period, the Decisionmaker will facilitate the exchange of written questions between the parties before a final determination is made.

- The Decisionmaker will invite each party to submit proposed questions for other parties or witnesses. Each party will have 2 days to submit the proposed questions to the Decisionmaker. After receiving the questions, the Decisionmaker will determine whether the questions must be rephrased, excluded, or permitted. The Decisionmaker will explain any decision to rephrase the question or to exclude a question as not relevant.
- Decisionmaker will then provide the parties and witnesses with the relevant written questions. The parties and witnesses receiving the questions have 3 days to submit written answers, and the parties may submit limited follow-up questions to the Decisionmaker. The exchange of questions and responses by the parties and witnesses will be concluded within a 10-day period.

#### Irrelevant Questions will be Excluded

The Decisionmaker may exclude questions that are improper or not relevant. For example, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove (1) that someone other than the respondent committed the conduct alleged by the complainant, or, (2) if the questions and evidence concern specific incidents between the complainant and respondent, and are offered to prove consent.

#### Determining Responsibility

- *Decisionmaker will evaluate relevant evidence.* The Decisionmaker will objectively evaluate all relevant evidence. They will not make credibility determinations based on a person's status as a complainant, respondent, or witness.
- *Decisionmaker will apply the preponderance of the evidence standard.* The Decisionmaker will apply the preponderance of the evidence standard to determine whether a party is responsible for the conduct alleged in the formal complaint.

- *Decisionmaker will issue a written determination and, if appropriate, specify the remedies and sanctions.* The Decisionmaker will issue a written determination simultaneously to both parties within 30 days after reviewing the investigative report. The written determination will include:
  - A statement of the allegations;
  - A description of the procedural steps taken by the District from the receipt of the formal complaint through the determination, including any notifications sent to the parties, interviews conducted with parties and witnesses, site visits performed, methods used to gather other evidence;
  - Findings of fact supporting the determination;
  - Conclusions regarding the application of the District's code of conduct to the facts;
  - A statement of, and rationale for the determination regarding responsibility as to each allegation; and
  - The bases and procedures for filing an appeal.
- *Sanctions and Remedies.* If the respondent is found responsible, they may be subject to a range of disciplinary sanctions, up to and including expulsion. The complainant may, if appropriate, also receive remedies that are designed to restore or preserve equal access to the District's education program or activity. The Title IX Coordinator is responsible for implementing these measures.
- A determination of responsibility in no way prejudices either the complainant or the respondent from seeking redress through state or federal agencies, as provided in law.

## **Appeal Process**

Either party may appeal the District's dismissal of a formal complaint or the Decisionmaker's determination regarding responsibility within 3 days after the determination is issued. The parties may only appeal on the following bases:

1. A procedural irregularity affected the outcome of the matter;
2. New evidence was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

3. The Title IX Coordinator, Investigator, or Decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The District will notify the other party in writing when an appeal is filed. Each party will have 10 days to submit a written statement either supporting or challenging the outcome.

The Appellate Decisionmaker will not be the same person as the Decisionmaker, the Investigator, or the Title IX Coordinator. The Appellate Decisionmaker will simultaneously provide to both parties a written decision explaining the result of the appeal and the rationale for the result.

### **Conclusion of the Formal Grievance Process**

The determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

### **Informal Resolution Process**

The District may offer an informal resolution process on a case-by-case basis. However, the District will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

- *General.* An informal resolution may only be offered after a formal complaint is filed. An informal resolution process will not involve a full investigation and adjudication.
- *Voluntary Process.* The informal resolution process will commence only if the District receive both parties' voluntary, written consent to the informal resolution process.
- *Written Notice Before Process Begins.* Before proceeding with an informal resolution process, the District will provide written notice to both parties containing the allegations and the requirements of the informal process. The notice will also explain that any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared. The District prohibits the parties from resuming a formal complaint arising from the same allegations after reaching a resolution.
- *Conflicts of Interest.* Any person designated by the District to facilitate an informal resolution process may not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

## **Retaliation Prohibited**

The District prohibits retaliation. It is a violation of this Policy Regulation to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

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 does not constitute retaliation.

## **Training**

The District will ensure that Title IX Coordinators, investigators, decisionmakers, and any person who facilitates an informal resolution process, receive training on:

1. the definition of sexual harassment;
2. the scope of the District's education program or activity;
3. how to conduct an investigation and grievance process including determinations, appeals, and informal resolution processes, as applicable; and
4. how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

The District will also ensure that decisionmakers and investigators receive training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

## **Recordkeeping**

The District will maintain the following items for a period of seven years:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the District's education program or activity.
2. Any appeal and the result.
3. Any informal resolution and the result.

4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. These training materials will also be publicly available on the District's website.
5. Records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment or documentation of why supportive measures were not offered to the complainant.

The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken.

LEGAL REF: 20 U.S.C. § 1681 et seq. (Title IX of the Education Amendments of 1972)  
34 C.F.R. Part 106

CROSS REFS: AC: Nondiscrimination/Equal Opportunity  
AC-E-2: Nondiscrimination/Equal Opportunity (Sample Notice)

LEGAL REF: 20 U.S.C. § 1681 et seq. (Title IX of the Education Amendments of 1972)  
34 C.F.R. Part 106 (Nondiscrimination On The Basis Of Sex In Education Programs Or Activities Receiving Federal Financial Assistance)

CROSS REFS.: AC-R-1, Nondiscrimination/Equal Opportunity (Complaint and Compliance Process)  
AC-E-1, Nondiscrimination/Equal Opportunity (Notice)  
AC-E-2, Nondiscrimination/Equal Opportunity (Report Form)  
GBA, Open Hiring/Equal Employment Opportunity  
GBAA, Sexual Harassment  
JB, Equal Educational Opportunities  
JBB, Sexual Harassment

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Lake County School District R-1, Leadville, Colorado