



## **4001.3: SEXUAL HARASSMENT COMPLAINT PROCEDURE**

The District is committed to making the schools free from sexual harassment and discrimination, harassment, intimidation, and bullying. Sexual harassment is a form of sexual discrimination under Title IX of the Education Amendment to the Civil Rights Act of 1972 and is prohibited by both Federal and State law. The District strictly prohibits sexual harassment of students and staff by other students, employees, or other persons at school, within the educational environment or program, or at any District sponsored or District related activity. The District shall ensure that all school personnel receive information about their rights to be free from sexual harassment, the District's procedures for reporting and investigating complaints of sexual harassment, and with whom any complaint should be reported and/or filed.

### **Definitions**

**Sexual Harassment:** Conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the District conditioning the provision of an aide, benefit, or service of the District on an individual's participation in unwelcome sexual conduct;
2. Unwelcomed conduct determined by a reasonable person to be so severe, persuasive, and objectively offensive that effectively denies a person equal access to employment, teaching, or the District's educational program or activity; or
3. Sexual assault as defined in 20 U.S.C. 1092, dating violence as defined in 34 U.S.C. 12291, domestic violence as defined in 34 U.S.C. 12291, or stalking as defined in 34 U.S.C. 12291.

Sexual Harassment also includes, but is not limited to, unwelcomed sexual advances, requests, or other verbal, visual or physical conduct of a sexual nature made by either student or staff within the educational setting under any of the following conditions:

1. Submission of the conduct as explicitly or implicitly made a term or a condition of an individual's academic status or progress; or
2. Submission, or rejection of, the conduct by the individual is used as a basis of academic decisions affecting the individuals; or
3. The conduct has the purpose or effect of having a negative impact on the individual's academic performance or of creating an intimidating, hostile or offensive educational or work environment; or

4. Submission to, or rejection of, the conduct by the individual is used as a basis for any decision effecting the individual regarding benefits or services, honors programs, or activities available at or through the District; or
5. Deliberate written or oral comments, gestures, or physical contacts of a sexual nature or demeaning to one's gender, which are unwelcome or interfere with the school environment; or
6. Implicit or Explicit sexual behavior by a fellow student, District employee, or other person within the school environment that has the effect of controlling, influencing, or otherwise effecting the school environment; or
7. Unwelcome suggestive, vulgar, or obscene letters, notes, posters, calendars, or other visual products or derogatory comments, slurs, and/or jokes of a sexual nature that is sufficiently persistent and pervasive.

**Hostile Educational Environment:** A hostile educational environment is created when sexual harassment is sufficiently severe and objectively offensive and persistent or pervasive.

**Complainant:** Any individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Formal Complaint:** 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 of sexual harassment. The formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic transmission by using the contact information listed for the Title IX Coordinator or by any additional method designated by the District.

**Supportive Measures:** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or to the Respondent before or after the filing of a formal complaint or where no complaint has been filed. Supportive measures are designed to restore or preserve equal access to employment, teaching, or the District's educational programs or activities without unreasonably burdening either party, including measures designed to protect the safety of all parties or the District's educational environment.

Supportive measures may include, but are not limited to the following: counseling, extensions of deadlines, modifications of work schedules, campus escort services, mutual restrictions on contact between parties, changes in work, leaves of absence, increase security, and other similar measures.

**Title IX Coordinator:** The Associate Superintendent of Human Resources is the Title IX Coordinator for the District. The mailing address for the Title IX Coordinator is 5606 South 147th Street, Omaha, Nebraska 68137. Phone: 402-715-8200. Email Address: TitleIX@mpsomaha.org The Title IX Coordinator is identified in all District Non-Discrimination Notices and publications, and is directed to coordinate the District's compliance efforts.

The District's Title IX Coordinator shall receive all reports of sex discrimination including sexual harassment. Any person may report sex discrimination including sexual harassment (whether or not the person reporting is the person alleged to be the victim of the conduct that could constitute sex discrimination or sexual harassment), in person, by email, by telephone, by using the contact information listed herein, or by any other means that results in the Title IX Coordinator receiving the verbal or written report.

**Working Days:** any days when school is in session for students during the school year and all weekdays when school is in recess for summer vacation, excluding any national holidays.

### **Reporting Sexual Harassment**

Any staff member or job applicant who believes that he or she has been the victim of sexual harassment or harassment because of sex by a student, teacher, administrator or other employee of the District or by any other person who is participating in, observing, or otherwise engaged in activities, including sporting events and other extracurricular activities, under the auspices of the District, is encouraged to immediately report the alleged acts to an appropriate District employee or directly to the Title IX Coordinator.

Any teacher, administrator, or other school official who has notice or received notice that a staff member or applicant has or may have been the victim of sexual harassment or harassment based upon the staff member or applicant's sex by a student, teacher, administrator, or other employee of the District, or by any other person who is participating in, observing, or otherwise engaged in activities, including sporting events and other extracurricular activities, under the auspices of the District, is required to immediately report the alleged acts to an appropriate District employee or directly to the Title IX Coordinator. Any District employee who receives a report of sexual harassment, or harassment because of one's sex, shall inform the Building Principal or Title IX Coordinator immediately.

Upon receipt of a report, the Building Principal shall notify the District Title IX Coordinator immediately. The Building Principal may request but shall not insist that a formal complaint be submitted to the Title IX Coordinator. A written statement of the facts alleged or as reported will be forwarded as soon as practical by the Building Principal to the Title IX Coordinator. In the event a Building Principal is provided a written statement, the Building Principal shall forward the written statement to the Title IX Coordinator within 24 hours of a report being made whether or not a Complainant decides to pursue a formal complaint.

## **Required Response**

The District, upon receipt of a formal complaint, or upon receipt of actual knowledge of sexual harassment in an educational program or activity, shall respond promptly in a manner that is not deliberately indifferent. The employment, teaching, and educational program or activity includes locations, events, or circumstances over which the District exercises substantial control over both the Respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by the District. The District's response shall treat the Complainant and Respondent equitably by offering supportive measures to the Complainant and Respondent and by following a grievance process before imposition of any disciplinary actions or sanctions against the Respondent.

The protections of this Rule apply to all students, employees, parents, and visitors to District property or District-sponsored activities or events. The District will investigate and address alleged prohibited conduct regardless of where it occurs.

For any party under the Rule under 19 years old, all written notifications provided pursuant to this Rule will be directed to the party's parents/guardians.

The grievance process may be temporarily delayed and/or timelines extended for good cause as determined by the Title IX Coordinator with written notice to the parties explaining the reason(s) for the delay.

Whenever the Title IX Coordinator determines that the District's Sexual Harassment Grievance process should be suspended to cooperate with law enforcement, the Title IX Coordinator shall provide written notice to all parties of such determination and provide the parties with a reasonable estimate of the length of the anticipated suspension.

Investigations begin with presumptions that the Respondent did not engage in any prohibited conduct, and that the Complainant is credible. A determination that the Non-Discrimination and Harassment Policy has been violated and credibility determinations will only be made at the conclusion of an investigation. In no event will past sexual behavior of a Complainant be considered, except in the limited circumstance where the evidence is offered to prove consent or that someone other than the Respondent committed the alleged misconduct.

In determining whether prohibited conduct occurred, an objective evaluation of all relevant evidence will be made and the following will be considered:

1. the surrounding circumstances;
2. the nature of the conduct;
3. the relationships between the parties involved;
4. past incidents; and
5. the context in which the alleged incidents occurred.

## **Sexual Harassment Grievance Process - Steps**

- 1. Receipt of Notice of Prohibited Conduct - Upon receiving notice of conduct that could constitute prohibited conduct, the Title IX Coordinator or his/her designee will promptly contact the Complainant in a confidential manner to discuss the availability of supportive measures and to explain the process for filing a formal complaint.**
- 2. Filing a Formal Complaint - An individual may file a formal complaint by submitting a written complaint in person, by mail, by telephone, or by e-mail to the Title IX Coordinator or his/her designee. If a verbal report of prohibited conduct is made, the Complainant will be asked to submit a written complaint. If a Complainant refuses or is unable to submit a written complaint, the Title IX Coordinator may cause a written summary of the verbal complaint to be made and either submit the written summary to the Complainant for signature or sign the complaint as provided below. If a Complainant does not file a formal complaint, the Title IX Coordinator in their sole discretion may sign a formal complaint and initiate the grievance process. The Title IX Coordinator will initiate the grievance process over the wishes of the Complainant only where such action is not clearly unreasonable in light of the known circumstances.**
- 3. Investigation and Informal Resolution - Upon receipt of a formal complaint, the Title IX Coordinator shall appoint a separate investigator and decision-maker, provide a written notice of allegations to both the Complainant and the Respondent identifying the factual basis of the allegation including sufficient details known at the time, stating that the Respondent is presumed not responsible for the alleged conduct, and that a determination of responsibility will be made at the end of the grievance process. No disciplinary sanctions shall be applied without following the sexual harassment grievance process prescribed herein when a formal complaint has been filed. The notice of allegations shall be provided to both parties with sufficient time to prepare a response before any initial interview of the Respondent is conducted.**

### **Informal Resolution Process**

**After the formal complaint is received and notice of allegations has been provided to all parties, the Title IX Coordinator may offer or request an informal resolution process, such as mediation or restorative justice, in lieu of a full investigation and determination. In no event will an informal resolution be facilitated to resolve a complaint of staff-on-student sexual harassment. In order for the informal resolution processes to be implemented, all parties must voluntarily agree in writing. In the event that a resolution is reached during the informal resolution process and agreed to in writing by the parties, then the terms of the agreed upon resolution will be implemented and any alleged harassment will be eliminated and the formal complaint will be dismissed. The Complainant is then precluded from filing a second complaint concerning the original allegation. At any time prior to agreeing to a resolution, any party may withdraw from the informal resolution process and resume the grievance process.**

**If the informal resolution process does not occur or is not utilized, the designated investigator will interview the Complainant, witnesses, and the Respondent and review relevant records.**

**District employees and students are expected to fully participate in investigations, but in no event will a Complainant be subjected to any disciplinary sanctions or consequences for refusing or failing to participate.**

**The written notice of allegations shall also state that the parties have an equal right to retain an advisor of their choice, who may be but is not required to be an attorney, and that the parties have an equal right to inspect and review evidence obtained during an investigation. The District shall not be responsible for any fees or costs related to any advisor selected by either of the parties provided however, if requested, the District shall provide District employees to act as an advisor, if so requested.**

**The District shall provide an equal opportunity for each of the parties to present fact and expert witnesses and other inculpatory or exculpatory evidence during the investigation and shall not restrict the ability of the parties to discuss the allegations or gather evidence.**

**Within 20 working days of receiving the formal complaint the District shall send written notice of any investigative interviews or meetings and advise the parties and their advisors of all evidence gathered directly related to the allegations ten (10) working days prior to the issuance of the final investigative report to allow the parties the opportunity to inspect, review, respond, and produce any additional evidence.**

**Once the investigator's report summarizing the relevant evidence is completed, the investigator simultaneously will send the report and supporting evidence to:**

- (a) parties for their review and written response;**
- (b) the decision-maker;**
- (c) the Title IX Coordinator.**

**The parties will have ten (10) working days to submit a response to the investigator's report, including proposed relevant questions for the decision-maker to ask the other party and/or any witnesses. In his/her sole discretion, the decision-maker may re-interview parties and/or witnesses to ask follow-up questions.**

**The decision-maker will review the investigation file and report, and may, but is not required to take the following steps:**

- (a) re-interview a party or witness, and**
- (b) gather additional evidence if deemed necessary.**

**No later than 20 working days after receipt of the investigator's report, the decision-maker simultaneously will issue to the parties a written determination as to whether the preponderance of the evidence shows that the Non-Discrimination and Harassment Policy was violated.**

**The written determination shall be provided to each party and will include the following information as appropriate:**

- (a) identification of the allegations,**
- (b) a description of the procedural steps taken,**
- (c) findings of fact,**
- (d) conclusion regarding application of the student discipline code or policies/procedures applicable to employees to the facts,**
- (e) a concise statement of the rationale supporting the conclusion on each allegation,**
- (f) what, if any, disciplinary sanctions imposed on the Respondent,**
- (g) what, if any, remedies will be instituted, and**
- (h) notice of the appeal procedure.**

**The decision-maker's determination is final, unless a timely appeal is filed.**

#### **4. Appeal**

**The party seeking an appeal shall file written notice with the Title IX Coordinator no later than 20 working days after the date of the decision-maker's written decision or after the date that a formal complaint is dismissed. The written notice shall state the grounds for the appeal. The Title IX Coordinator will designate an appeal officer to decide the appeal and notify all parties that an appeal has been filed.**

**No later than 10 working days after an appeal is filed, the appealing party may submit a written statement in support of an appeal. The other party or parties may submit a written statement no later than 10 working days after the appealing party's written statement is submitted or 10 working days from the appealing party's deadline if the appealing party does not to submit a written statement. Written statements shall be submitted to the Title IX Coordinator who will provide them to the other party or parties and the appeal officer when received.**

**The appeal may be considered due to the following reasons only:**

- (a) procedural irregularity that affected the determination,**
- (b) new evidence that was not reasonably available at the time the determination was made, or**
- (c) conflict of interest or bias on behalf of the Title IX Coordinator, investigator, or decision-maker.**

**The review of the investigation and written determination may include any of the following steps:**

- (a) review of the evidence gathered and written reports and determinations,**
- (b) re-interviewing a party or witness, and**
- (c) gathering additional evidence if deemed necessary.**

**The appeal officer shall prepare a written response to the appeal within 15 days after the deadline to submit written statements in support of or challenging the determination. Copies of the written response on appeal shall be provided simultaneously to the Complainant, the Respondent, and the Title IX Coordinator. The decision of the appeal officer shall be final.**

## **District Action**

If the investigation and decision making results in a finding that the Complainant's report was factual and Respondent or other individuals violated the Non-Discrimination and Harassment Policy, the District will take prompt, corrective action to ensure that such discriminatory conduct ceases and take appropriate action to prevent any reoccurrence. The District will make all reasonable efforts to remedy discriminatory effects on the Complainant and any others who may be affected.

Disciplinary actions and the range of sanctions and remedies for responsible persons shall be consistent with the District's existing student code of conduct, professional code of conduct and staff discipline, Board of Education policies and rules and District procedures, and any applicable state and federal laws, and shall be implemented at the conclusion of the process.

A formal complaint will be dismissed if the conduct alleged:

1. Did not constitute sexual harassment as defined in Title IX and/or Title IX regulations;
2. Did not occur in the employment, teaching, or District's educational programs or activities; or
3. Did not occur against a person in the United States.

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

1. The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
2. The Respondent is no longer enrolled or employed by the District; or
3. Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

## **Available Interim Measures**

The District shall take steps to ensure equal access to the employment, teaching, and District's educational programs or activities and protect the Complainant as necessary, including taking interim measures during the process and before the final outcome of an investigation. The District shall notify the staff of the options to avoid contact with the alleged Respondent where available. As appropriate, the District shall consider a change in working situation when possible. The District shall assess opportunities to provide increased monitoring, supervision, or security at locations or activities where the alleged discrimination and sexual harassment occurred. Nothing in this rule shall prohibit the District from placing an employee on administrative leave during the pendency of the grievance process, nor from removing a Respondent from the employment, teaching, or learning environment on an emergency basis if the District undertakes an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of any staff member or student justifies removal and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.



**Potential remedies for staff who have been subjected to sexual harassment or harassment because of sex include, but are not limited to:**

- 1. Direct intervention or consequences applied to the Respondent;**
- 2. Supportive Services available to either the Complainant or the Respondent through the District's assistance program;**
- 3. The District may issue statements to its staff or the community making it clear that the District does not tolerate sexual harassment or harassment because of sex and will respond to any reports about such incidents;**
- 4. Non-discrimination training for students, employees, or parents/guardians and families.**

**Employees who have committed sexual harassment or harassment because of sex in violation of the Non-Discrimination and Harassment Policy will be subject to employee discipline up to and including termination. Incidents of sexual harassment, depending on their nature, may also be referred to law enforcement and reported to child protective services and other state and federal agencies, as appropriate.**

### **Retaliation**

**No District employee, representative, or agent may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any rights or privileges protected by this rule 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 determination under this rule.**

**The District prohibits retaliation against any participant in the reporting, complaint, or grievance process. A separate uniform complaint may be filed if retaliation occurs against any individual involved in the processing of a discrimination, harassment, or bullying complaint. Each complaint shall be investigated properly and in a manner which respects the privacy of all parties concerned. Follow-up with the student or employee will occur promptly to ensure that the harassment and/or retaliation has stopped and that there will be no further retaliation.**

**All persons are prohibited from knowingly proving false statements or knowingly submitting false information during the complaint process and any person who does so may be subject to disciplinary action outside of and in addition to any disciplinary action under this Rule.**

## **Confidentiality and Retention of Investigation Information and Records**

Except as necessary to complete a thorough investigation and grievance process as required by law, the identity of the Complainants(s), Respondents(s), witnesses, disclosure of the information, evidence, and records which is required to be disclosed to the parties or the designated representatives, the information, records, and evidence gathered in the investigation will otherwise be maintained in strict confidence by the District. The District is not responsible, nor can it control any re-publication or disclosure of such information, evidence or records by the participating witnesses, parties or representatives.

The Title IX Coordinator will retain investigation files for a time period of no less than seven (7) years, and investigation determination notices will be permanently retained in individual employee and student files.

Where a charge or civil action alleging discrimination, harassment, or retaliation has been filed, all relevant records will be retained until final disposition of the matter.

## **Training**

The District will provide annual training to employees on identifying and reporting acts that may constitute discrimination, harassment or retaliation. The Title IX Coordinator, designated investigators, designated decision-makers, designated appeal officer, and any District administrators who are designated to facilitate informal resolution processes, will receive additional annual training on this policy and implementation of the grievance process.

The District will provide, as appropriate, instruction to staff regarding discrimination, harassment, and retaliation.

### **Date of Adoption**

November 16, 2020

### **Related Policies and Rules**

**[1100.4: Notice of Non-Discrimination](#)**

**[4001: Non-Discrimination and Harassment](#)**

**[4001.1: Non-Discrimination and Harassment](#)**

**[4001.2: Non-Discrimination and Harassment Complaint Procedure](#)**

**[4100: Recruitment, Selection, and Non-Discrimination](#)**

**[4163.3: Remedial Action Investigation/Procedure](#)**

**[5010.1: Non-Discrimination and Harassment](#)**

**[5010.2: Non-Discrimination and Harassment Complaint Procedure](#)**

**[5010.3 Sexual Harassment Complaint Procedure](#)**

**5020: Equal Educational Opportunity**

**5020.1: Equal Educational Opportunity**

**6002: Non-Discrimination**

**6640: Section 504 Compliance**

## **Legal Reference**

**Nebraska Fair Employment Practice Act (Neb. Rev. Stat. §48 1101 et seq.)**

**Neb. Rev. Stat. §79-544; 79-896; 79-820; 79-801; 79-802; 48-901 to 48-912**

**Age Discrimination in Employment Act**

**Title VII Civil Rights Act**

**Rehabilitation Act 1973 and Rehabilitation Act Amendments**

**Title IX of the Education Amendments of 1972**

**34 C.F.R. §§ 106.30, 106.44, 106.45 (2020)**

**The Americans with Disabilities Act of 1990**

**Equal Employment Opportunity Act**

**Nebraska Equal Opportunity in Education Act (Neb. Rev. Stat. §79-2,114 to 79-2,124)**