Washington County School District
121 West Tabernacle Street
Saint George, Utah 84770
435-673-3553

District Policy 2116

Sexual Harassment

Title IX Sexual Harassment Policy and Procedures for Washington County School District – Adopted 6-8-21

---

1. Purpose

The Washington County School District is dedicated to cultivating an educational environment in which all individuals are treated with respect and dignity. No person on the basis of sex, shall be subjected to discrimination or sexual harassment under any education program or activity receiving Federal financial assistance. (20 U.S.C. 1681(a)).

2. Policy

Sexual harassment is prohibited by Title IX of the Education Amendments of 1972 and by this Policy in all of the District's educational programs including academics, extracurricular activities, and athletics. Allegations that originate off-campus which impact the victim's ability to effectively access and continue their educational program **may** be addressed under this Policy at the discretion of the Designated District Title IX Coordinator. This may include allegations of sexual harassment through the internet, electronic mobile devices and/or social media.

2.1 This Policy applies to all students, staff members, administrators, or third parties. The Board is resolute in its determination to enforce this Policy by investigating complaints and taking appropriate action when violations are identified.

2.1.1. All Designated District Title IX Coordinators, as well as Investigator(s), Decision-Maker(s), or any person designated to facilitate an Informal Resolution Process shall not have a conflict of interest or bias for or against Complainants or Respondents generally, or an individual Complainant or Respondent.

2.2. Inquiries:

Students, parents, guardians, or citizens who have inquiries; or are alleging violations of this Policy may contact the designated school representative and/or the Designated District Title IX Coordinator as follows:

Employees: **Director of Human Resources**

Students: **Director of Student Services**

Athletics: **Director of Secondary Education**

Washington County School District

121 W Tabernacle St.

St. George, UT 84770

(435) 673-3553 Ext: 5164

Email: ocr_coordinator@washk12.org

2.3. Definitions:

2.3.1. Actual Knowledge: Notice of allegations of sexual harassment to any employee of the District.

2.3.2. Complainant: An individual who is alleged to be the victim of conduct that could constitute sexual harassment and makes a complaint.

2.3.3. Formal Complaint: A document filed by a Complainant and/or signed by the Designated District Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the District investigate the allegation of sexual harassment.

2.3.4. Respondent: An individual who has been reported to be the perpetrator of conduct as per Policy.

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

(1) Quid Pro Quo: A District employee that directly or indirectly requires a student or subordinate to submit to unwelcome sexual conduct to participate in a program or activity and/or requires sexually based actions in order for the student or subordinate to receive aid, benefit, or a service of the District; including influencing an educational decision, a good grade, attending an event, or participation.

(2) Unwelcome sexual 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.

a. Severe: Based on whether the described occurrence or conduct was severe from the perspective of a reasonable person in the Complainant's position.

b. Pervasive: A single instance of an unwelcome act typically does not meet the Title IX standard for sexual harassment requiring investigation, but there are instances when a single unwelcome act may meet the standard. Factors to be considered include, but are

not limited to, whether there is a pattern of sexual harassment, the number of people involved, and whether the unwelcome sex-based conduct involves widespread dissemination of offensive material.

c. Objectively Offensive: Whether the described occurrence or conduct was offensive from the perspective of a reasonable person in the Complainant's position. "Just joking" is not an accepted excuse.

d. Denied of Equal Access: Does not require that the Complainant be entirely or physically excluded from educational opportunities, but rather that the sexual harassment has so undermined and detracted from the Complainant's educational experience that he/she is effectively denied school resources and opportunities. No concrete injury is required to show a denial of equal access. Examples may include, but are not limited to an athlete who quits the team, skipping class to avoid the harasser, a decline in a student's academic performance, difficulty concentrating, etc.

(3) Sexual harassment includes dating violence, domestic violence, stalking or sexual assault as defined in the Clery Act and in this Policy as follows:

a. 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: the length or relationship; the type of the relationship; and the frequency of the 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.

b. 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 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 Utah, 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 Utah.

c. Stalking: Two or more acts of conduct that is directed at a specific person that would cause a reasonable person to fear for his/her safety or suffer substantial emotional distress, including, 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.

d. Sexual Assault: is defined as any sexual act directed against another person for the purposes of sexual gratification, without consent of the victim, including instances where the victim is incapable of giving consent. It includes rape, fondling, incest, and statutory rape as defined below:

i. 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.

ii. 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.

iii. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

iv. Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

2.3.6. Sexual Misconduct: Conduct of a sexual nature, including inappropriate sexual 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. Sexual misconduct is prohibited and will be investigated and addressed under Washington County School District Policy 2110 Safe Schools; 1710 Non-Discrimination; 1450 Discipline and Termination, and Non-renewal of Contract.

2.3.7. Reasonable person means an individual under similar circumstances and with similar identities to the victim/Complainant.

2.3.8. Substantial Emotional Distress: Is significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

2.3.9. Supportive Measures: Non-disciplinary, non-punitive individualized services offered promptly as appropriate, as reasonably available, and without fee/charge to the Complainant or Respondent before and after the filing of a complaint. Such measures are designed to restore or preserve equal access to the District's educational program or activity without unreasonable burdening either party, including measures designed to protect the safety of all parties and protect the educational environment.

2.3.10. Third Party: The jurisdiction of this policy includes allegations occurring at all schools, and district programs; enroute to school activities; and where the Washington County School District has exercised substantial control over both the Respondent and the Complainant and the context in which the reported Sexual Harassment occurs. Third party for the purposes of this policy therefore includes volunteers, vendors, visitors and independent contractors who are present in described settings; or who have knowledge of an alleged violation and report it.

3. Complaint Procedure

(Grievance Policy for Employee Complaints of Discrimination is reference in District Policy 1710; Parent Administrative Grievance Procedure District Policy 3500; Non-Discrimination Policy 2115)

The intent of the complaint process is to provide a prompt and equitable resolution of complaints alleging any form of sexual harassment. The essential components of the complaint process include:

(1) Reporting the complaint, i.e., Notice;

(2) Implementing supportive measures;

(3) Determining if the complaint is formal;

(4) Investigating the complaint;

(5) Providing a response regarding the outcome of the complaint to both parties; and

(6) Filing an appeal.

3.1. Reporting: All employees of the District are required to report any allegation or observation of discrimination, sexual misconduct, and sexual harassment to the employee's immediate supervisor, who will report to the school principal where the student/employee is enrolled or employed. Receiving a complaint from anyone (not just the victim), constitutes notice and therefore triggers a required School/District response.

3.1.1. Reporting to Law Enforcement: In cases involving potential criminal conduct, school personnel must immediately notify appropriate law enforcement authorities. When any person has reason to believe that a child has been subjected to abuse or neglect, that person shall immediately notify the nearest peace officer, law enforcement agency, or office of the Division of Child and Family Services. A law enforcement investigation does not relieve the school of its independent obligation to investigate the conduct.

3.1.2. Timelines: Any reported allegations of sexual harassment will be investigated promptly; without deliberate indifference; and in accordance with the complaint procedures set forth below. Timelines may vary depending on the complexity of the investigation and the severity and extent of the sexual harassment. This includes complaints filed by students against school employees, other students, or third parties. The District's process may be delayed for good cause including the absence of a party, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.

3.1.3. Initial Inquiry: Upon actual knowledge, the school administrator shall without delay conduct an initial inquiry to receive information about the allegation (this is not an interview). The school administrator shall then notify the Designated District Title IX Coordinator about the allegation to determine if the conduct, on the face of the allegations, is more likely sexual misconduct or sexual harassment as defined in this Policy.

3.2. Supportive Measures: Supportive measures shall be offered. The determination of supportive measures shall be made when the school administrator notifies and coordinates with the Designated District Title IX Coordinator. Complainants and Respondents are to be treated equitably. Every effort to preserve equal access for all parties shall be implemented. Individualized supportive measures as defined in this Policy shall be made available to both the Complainant and Respondent depending on their circumstances.

3.2.1. Supportive measures may include altering work arrangements, changes in work locations or leave of absence (specific to employees); mutual restrictions on contact between parties; counseling; school safety plan; supervised transitions; increased security and monitoring of certain area of campus; and course related adjustments including extensions of deadlines, modifications to the amount of work required, changing class schedules, separate classes, etc.

3.2.1.2. All supportive measures or reasons for not offering supportive measures must be documented and made available to the Designated District Title IX Coordinator.

3.3. Emergency Removal: A Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made; therefore, the school **shall not** impose any disciplinary actions until the conclusion of the process; however, it may be necessary to impose an emergency removal if there is an **immediate threat to the physical health or safety** to the Complainant and/or other students, based upon an individualized safety and risk analysis. A removal cannot be based solely upon an allegation.

3.3.1. Notice of Emergency Removal: Prior to imposing an emergency removal, the Respondent must be given notice and may have the opportunity to challenge the decision.

3.3.2. Removal of Employees: An employee Respondent may be placed on paid administrative leave with or without a showing that the Respondent poses an immediate threat to the physical health or safety of individuals.

3.4. Formal Complaint: Upon learning through actual knowledge and initial inquiry that the conduct that could constitute sexual harassment, the school administrator shall notify the Designated District Title IX Coordinator who may interview the Complainant. The procedures in this Policy must be followed if the allegations, if true, meet the definition of sexual harassment**;** otherwise follow Policy 2110.

3.4.1. Filing a Formal Complaint: A student and/or parent/guardian may complete a written complaint on behalf of a minor Complainant requesting that the District/School investigate an allegation of sexual harassment. An employee is required to file his/her own complaint. However, in either case, the Designated District Title IX Coordinator may also issue/sign a formal complaint on behalf of the Complainant if the Complainant refused to file but the allegation, on its face, it meets the definition of sexual harassment. The Designated District Title IX Coordinator shall file a formal complaint if there is a physical threat to the Complainant, but the Complainant cannot proceed, or where there is an institutional problem.

3.4.2. Contents: A written formal complaint may be submitted on the District form or other written document and may be submitted via mail or electronic means. It must include the following:

a. A request for an investigation including the name, address, telephone number and signature of the Complainant.

b. The name, address of the school, name of the District or District department where the Complainant is enrolled or employed or attempting to be enrolled or employed.

c. The date(s) on which the alleged sexual harassment took place.

d. The name(s) of alleged person(s) responsible for the alleged violation (the Respondent(s)).

e. A sufficient description of the nature of the alleged sexual harassment, i.e., explain what occurred and the harm caused by the incident.

f. A statement of requested resolution/imposition of remedies (which may include supportive measures). Disciplinary action lies only within the authority and sole discretion of the District.

3.4.3. Complaint Notice: Upon receipt of a formal complaint, the Designated District Title IX Coordinator shall provide written notice to the known parties, which shall include:

a. Notice of the allegations, including the name of the Complainant, a description of the alleged harassment, and a range of dates during which the harassment is alleged to have occurred.

b. A statement that the Respondent is presumed not responsible until a determination of the responsibility has been made at the conclusion of the investigation.

c. An outline of the investigation process.

d. The standard of evidence that will be applied.

e. Directives not to retaliate (for the Respondent).

f. Information about and offer of the Informal Resolution Process.

3.4.4. Dismissal of a Complaint:

3.4.4.1. Mandatory Dismissal: If the alleged conduct does not meet the definition of sexual harassment defined in this Policy or that the alleged conduct did not occur in the District's education program or activity a complaint **must** be dismissed at any time by the Designated District Title IX Coordinator.

3.4.4.2. Discretionary Dismissal: The complaint **may** be dismissed if the Complainant makes a request in writing to the Designated District Title IX Coordinator that he/she would like to withdraw his/her formal complaint; or if the Respondent is no longer enrolled or employed by the District; or if circumstances prevent the District from gathering sufficient evidence to reach a conclusion.

3.4.4.3. Dismissal Notice: Upon dismissal of a formal complaint, written notice of the dismissal and reasons why must be sent to the Respondent and Complainant simultaneously. Dismissal does not preclude action under another District Policy. The Complainant may appeal the dismissal in accordance with the procedures for appeal in this Policy.

3.4.5. Informal Resolution Process: Following a formal complaint, the Complaint and the Respondent will be given the option of participating in an Informal Resolution Process which may be facilitated any time after the complaint has been filed and prior to the determination with the voluntary written consent of both parties. If the Informal Resolution Process fails, the Formal Complaint will resume. Informal Resolution is not an option when the allegations are of an employee sexually harassing a student.

3.4.5.1. Informal Resolution Notice: An informal resolution process may be facilitated provided that the parties receive written notice with the following information:

a. the allegations;

b. the requirements of the process, including the circumstances that would preclude the parties from resuming/re-filing a formal complaint arising from the same allegations;

c. the right to withdraw from the Informal Resolution Process and resume the investigative process at any time, and

d. consequences that might result from participating in the informal process including records that will be maintained by the District or that could be shared.

3.5. Investigation: Specifically assigned trained administrators, i.e., “Investigators” shall conduct investigations of Formal Complaints.

3.5.1. Written Notice: Investigators shall provide written notice to the parties, including the date, time, location, purpose of all investigative interviews, the right to bring an advisor, and the right to bring any document, evidence, or other information the party would like the investigator to consider. Sufficient time (at least two days) should be allowed following the notice for the parties to prepare to participate.

3.5.2. Interviews: The Complainant and Respondent may be accompanied by an advisor for support, but not to speak for them. The Investigators shall also provide an equal opportunity for the parties to suggest witnesses for the investigator to consider interviewing.

3.5.3. Evidence: The Investigator(s), rather than the parties, shall ensure burden of proof by gathering sufficient evidence. The Complainant may present evidence supporting the allegations. The Respondent may present evidence refuting the allegations.

3.5.3.1. All evidence shall be reviewed and preserved including video/camera footage, photos, physical evidence, documents, correspondence, reports, and electronic information.

3.5.3.2. Investigative Summary: Prior to completing the Final Investigative Report, Investigator(s) shall send a summary of the evidence to both parties for inspection and review. This may be done through electronic means or via hard copy.

3.5.3.3. Both parties have 10 calendar days to submit a written response to the summary. Investigator(s) will consider the responses but need not adopt them.

3.5.4. Final Investigative Report: After the 10 days, Investigator(s) shall draft a Final Investigative Report and provide it to the Complainant, Respondent and Designated Decision-Maker.

3.5.4.1. The report must contain: a description of the complaint; a description of the interim supportive measures including steps taken to date toward an equitable solution; a detailed description of the investigation (names and dates of individuals interviewed), and summary of the evidence considered.

3.6. Decision-Maker Investigation: Decision-Maker(s) are designated District administrators who provide a determination regarding the responsibility of the Respondent and the outcome of the complaint to both parties.

3.6.1. Upon receipt of the Final Investigative Report, the Decision-Maker(s) shall notify both parties that they have 10 days to submit cross-examination questions in writing for the other party and/or any witnesses to answer. Additional questions may be allowed at the sole

discretion of the Decision-Maker(s). Should the Decision-Maker(s) determine that a question is not relevant, they must explain why to the requesting party.

3.6.2. Decision-Maker Written Determination: The Decision-Maker(s) shall base their conclusions on the preponderance of the evidence standard. Careful judgment of credibility must be considered based upon factors such as plausibility and consistency. The Respondent, Complainant and Designated District Title IX Coordinator shall be provided with the Written Determination, including:

a. Identification of the allegations potentially constituting sexual harassment as defined by Policy.

b. A description of the procedural steps taken from the receipt of the formal complaint through to the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather evidence.

c. Findings of fact supporting the determination.

d. Conclusions regarding the application of this Policy or other policies to the facts

e. A statement of, and rationale for, the finding of fact to each allegation, including a determination regarding responsibility.

f. Disciplinary actions that will be imposed on the Respondent consistent with Policy 2115 Safe Schools or for employees Policy 1450 Discipline and Termination, and Non-renewal of Contract. (The Decision-Maker(s) shall verify with the school administrator that such documentation is entered into the District student information system.)

g. Remedies designed to restore or preserve equal access for the Complainant to the District's educational program or activity. (The Designated District Title IX Coordinator shall verify with the school administrator that effective implementation of any remedies).

h. Procedures to appeal (as per below).

3.7. Appeal Process: Within 10 days of the receipt of the Final Investigative Report or Written Determination a party may appeal in writing to the Superintendent.

3.7.1. The purpose of an appeal is to determine whether the procedures as per this Policy were followed; or if a party believes there was a conflict of interest regarding the Designated District Title IX Coordinator(s), Investigator(s), and/or Decision-Maker(s). If an appeal does not introduce new evidence, allege conflict of interest, or is a violation of the process, it may be denied.

3.7.2. If the appeal is granted, both parties will be given a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome.

3.7.3. The Superintendent will review the complaint, findings, and render a decision in writing which will be provided simultaneously to both parties. The written decision on the appeal may take one of three positions:

- Affirm the Decision-Maker(s) decision

- Repeal the Decision-Maker(s) decision
- Remand the Decision-Maker(s) decision

3.8. Retaliation is prohibited: 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 of an investigation or proceedings.

3.8.1 Monitoring Outcomes: School administrators should monitor the impact of the complaint, if any, on the campus climate. Such consideration is intended to protect any person who was involved in the complaint from retaliation and/or implement further supportive measures. Anyone found to have engaged in retaliation is subject to disciplinary action.

3.9. Record Retention: All records created during the entire process must be maintained for 7 years, or 2 years after the student graduates (whichever is longer); including, but not limited to, supportive measures, informal resolution, the determination, disciplinary sanctions, remedies, appeal and training materials used during the process.

3.10. Training: All employees and students shall be provided with access to this Policy as per the District website. Ongoing Title IX training shall be provided.

3.10.1. Administrative employees who have specific roles such as School Administrators, Designated District Title IX Coordinator, Investigator, Decision Maker, Superintendent as per Policy shall receive training on this Policy including:

a. The definition of sexual harassment

b. The scope of the district's education program or activity

c. How to conduct an investigation including how to determine relevance to create an investigative report that fairly summarizes relevant evidence, how to write and issue an investigative report,

d. How to serve impartially, including prejudgment of the facts at issue, conflicts of interest and bias.

3.10.2. All Decision-Makers must receive training on the issues of relevance of questions and evidence, including where questions and evidence about the Complainant's predisposition or prior sexual behavior are not relevant.

References:

Clery Act of 1990 (20 U.S.C. § 1092(f)) (34 CFR 668.46)

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

Utah Code Ann § 62A-4a-402 et. seq. Utah Human Services Code. Child Abuse or Neglect Reporting Requirements.

Utah Code Ann §§ 76-5-401 through 76-5-407. Utah Criminal Code. Sexual Offenses.

Utah Administrative Code R277-217, Utah Educator Standards.

Washington County Board Policy 1710: Non-Discrimination

Washington County Board Policy 1450: Discipline and Termination and Non-renewal of Contract.

Washington County Board Policy 2110: Safe Schools.

Washington County Board Policy 3510: Bullying and Hazing

Washington County Board Policy 3550: Parent Administrative Grievance Procedures