

Title IX Notice of Nondiscrimination and Sexual Harassment Procedure

Section 1. General Policy Statement and Scope. Pursuant to Title IX of the Education Amendments of 1972 ("Title IX"), East Allen County Schools ("EACS") does not tolerate discrimination or harassment in the education program or activity that it operates, employment therein, and admission thereto, including sexual harassment.

The term "sexual harassment" as used in this procedure shall mean conduct on the basis of sex that satisfies one or more of the following:

1. A District employee conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (i.e., *quid pro quo* sexual harassment);
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 EACS education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking as defined by Federal law.

The District designates the following staff member as the District's Title IX Coordinator and authorizes this individual to coordinate the District's Title IX compliance. Inquiries about the application of Title IX and its regulations may be referred to the Title IX Coordinator.

Title IX Coordinator

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The District is committed to promptly responding to reports of sexual harassment. All reference to "days" within these procedures shall mean instructional days. The procedures described below may be subject to temporary delays based on good cause (e.g., law enforcement involvement, absence of a party, witness, or advisor, translation or accommodation needs) with written notice to both parties explaining the reason for the delay.

Section 2. Reporting Sexual Harassment. Anyone who believes that a student or staff member has possibly been the target of sexual harassment should immediately report the situation to an appropriate staff member such as a teacher, counselor, administrator, or the Title IX Coordinator. Any person may report sexual harassment in person, by mail, by telephone, or email using the contact information for the Title IX Coordinator.

Any employee who has reason to believe that a student or staff member has been the target of sexual harassment must report the behavior to his/her building level leader, such as a principal.

The “Complainant” is a person alleged to be the victim of sexual harassment and the “Respondent” means any individual who is reported to be the perpetrator of sexual harassment.

The District accepts anonymous reports. However, anonymous reports may hamper the District’s ability to respond to allegations of sexual harassment.

Section 3. Emergency Removal. In situations where a Respondent poses an immediate threat to the physical health and safety of any individual (including self) before or at any time during the proceedings described in these procedures, the District may remove Respondent from all programs and activities. In order to do so, the District must a) undertake an individualized safety and risk analysis, b) determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and c) provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

An emergency removal does not affect or modify any rights a student receiving special education may have under the IDEA, Section 504, or the ADA.

Section 4. Response to a Report and Supportive Measures. Upon receipt of a report of sexual harassment, the Title IX Coordinator must promptly, usually within two (2) days, contact the Complainant to discuss the availability of supportive measures.

Supportive measures are non-disciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent. 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 counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, leaves of absence in the case of employees, increased security and monitoring of certain areas of the campus, and other similar measures.

In addition to discussing the availability of supportive measures, the Title IX Coordinator will also consider the Complainant’s wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the Complainant the process for filing a formal complaint. The Title IX Coordinator will make contact with the Complainant in person, via phone, or via virtual meeting in order for the Complainant to ask questions. If the Complainant is a student under the age of eighteen, the student’s parent will be contacted simultaneously. Supportive measures may also be offered to the Respondent.

A “formal complaint” is a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting the District investigate the allegation(s) of sexual harassment.

Even in instances where a Complainant chooses not to file a formal complaint, supportive measures may continue at the discretion of the Title IX Coordinator.

The Title IX Coordinator may decide sign a formal complaint to investigate the allegation(s) of sexual harassment against the wishes of the Complainant where moving forward without an investigation would be unreasonable. Such circumstances may include, but are not limited to, reports that indicate multiple Respondents, the involvement of a District employee, and/or continued sexual harassment of the Complainant and others.

While there is no deadline by which a Complainant must file a formal complaint, the District encourages Complainants to submit a formal complaint as soon as possible.

The District will offer supportive measures to a Complainant who is the subject of an anonymous report. However, should a Complainant desire to initiate the grievance process, the Complainant cannot remain anonymous or prevent the Complainant’s identity from being disclosed to the Respondent.

Section 5. Dismissal and Consolidation. In certain instances, the District may dismiss or consolidate formal complaints. Such instances of dismissal include, but are not limited to, when the alleged conduct, even if true, would not constitute sexual harassment under these procedures, when the Respondent is a non-student or non-employee of the District, or when a Complainant notifies the Title IX Coordinator they would like to withdraw the formal complaint. A dismissal does not preclude the District from taking action under another provision of the student code of conduct. If a formal complaint is dismissed, the District will promptly inform the parties of the reason for dismissal and the right to appeal.

Further, the District may consolidate formal complaints where the allegations of sexual harassment arise out of the same facts or circumstances.

Section 6. Grievance Procedures. The District will treat Complainants and Respondents equitably throughout this process. As such, the District will only impose disciplinary sanctions following the completion of the informal process or investigation and determination process. All Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution will receive training regarding topics related to this procedure, including: the definition of sexual harassment, the scope of the District’s education program and activity, and how to conduct these grievance procedures.

All Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution will objectively evaluate all relevant evidence – both inculpatory and exculpatory. Further, no credibility determinations will be based on a person’s status as a Complainant, Respondent, or witness.

Consistent with the law, the District will presume the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The District will utilize the preponderance of the evidence standard when determining responsibility. The District 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. Further, questions or evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions or evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or to prove consent.

Section 7. Notice. Upon receipt of a formal complaint, the Title IX Coordinator will provide written notice to the parties (to the extent known) containing the following information:

1. Notice of the District's grievance process, including the informal resolution process;
2. Notice of the allegations of sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include: the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known;
3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
4. The parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
5. The District's code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, additional allegations are uncovered and therefore investigated, the District will provide a supplemental notice of the additional allegations to the parties whose identities are known.

Section 8. Informal Process. Upon receipt of a formal complaint and after providing sufficient notice to the parties, the District may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication of the allegations. The District may not require the parties to participate in the informal process, but instead must obtain the parties' voluntary, written consent to participate.

The informal process is not available to resolve allegations that an employee sexually harassed a student. Further, at any time prior to agreeing to a resolution during the informal process, any of the parties may end the informal process and initiate the investigation and determination process.

Section 9. Investigation and Determination. Unless the District dismisses a formal complaint or the parties resolve a formal complaint through the informal process, the District will investigate the allegations of sexual harassment and make a determination regarding responsibility.

The burden of proof and collection of evidence rests with the District. To that end, the Title IX Coordinator in conjunction with a designated building-level leader will conduct an investigation. The means of investigating a formal complaint include, but are not limited to Complainant, Respondent, and witness interviews and review of documentation. The parties shall have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The District will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. Evidence or information related to the allegations under investigation may not be discussed by the parties, except with their chosen advisors. The parties may not substantially disrupt the educational environment. It is anticipated that the collection of evidence for an investigation will conclude within thirty (30) days, unless there are extenuating circumstances.

Prior to any interview or meeting, the party involved will receive written notice of the date, time, location, participants, and purpose of the interview/meeting. The written notice will be provided to the party with sufficient time for the party to prepare to participate.

The parties may be accompanied to any meeting or proceeding related to the investigation by an advisor of their choice, who may be, but is not required to be an attorney. Apart from a union representative accompanying an employee who is a party, employees are discouraged from serving as advisors to students.

Advisors may not present on behalf of the party they accompany and should request or wait for a break in the meeting if they wish to interact with the Title IX Coordinator or building level leader. Advisors may confer quietly with Parties as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the party and their advisors should ask for a break or step out of the meeting. An advisor who disrupts the process will receive one warning, after which if continued disruption occurs the advisor will be removed from the meeting/proceeding. In such an event, the parties will be given the opportunity to reschedule and be accompanied by another advisor.

When the Title IX Coordinator and building level leader have completed their collection of evidence, they will provide both parties with an equal opportunity to inspect and review the evidence obtained that is directly related to the allegations raised in the formal complaint so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

The parties and any advisors must execute the provided non-disclosure agreement before they may receive the evidence for review. Following execution of the non-disclosure agreement, the Title IX Coordinator and/or building level leader will send to each party and the party's advisor, if applicable, the evidence subject to inspection and review in an electronic format or hard copy, and parties will have ten (10) days to submit a written response, which the Title IX Coordinator will consider prior to completion of the investigative report.

Following the period for the parties' review and inspection of the evidence, the Title IX Coordinator and building level leader will create an investigative report that fairly summarizes relevant evidence. At least ten (10) days prior to the time of determination, the Title IX Coordinator and building level leader will send to each party and the party's advisor, if applicable, the investigative report in an electronic or a hard copy, for their review and written response.

One of the Assistant Superintendents will act as the decision-maker. After the investigative report has been sent to the parties and before a determination regarding responsibility, each party will be afforded the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

The Superintendent may exclude questions as not relevant, including questions that seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. Further, questions about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or to prove consent. Any decision to exclude a question as not relevant will be explained to the party proposing the question. The process of written questions and follow up questions should take thirty (30) days or less.

Within a reasonable time period following the written questions, the Assistant Superintendent, acting as the decision-maker, will issue a written determination regarding responsibility applying the preponderance of the evidence standard. The written determination must include:

1. Identification of the allegations potentially constituting sexual harassment;
2. A description of the procedural steps taken;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the recipient's code of conduct to the facts;
5. A statement of, and rationale for, the result as to each allegation; and

6. The recipient's procedures and permissible bases for the Complainant and Respondent to appeal.

The Assistant Superintendent will provide the written determination to the parties simultaneously. The Title IX Coordinator is responsible for effective implementation of any remedies.

Section 10. Remedies. Where, following the formal or informal process, the District determines a Respondent responsible for sexual harassment, the District shall provide remedies designed to restore or preserve equal access to the recipient's education program or activity. Such remedies may include supportive measures and/or discipline up to and including expulsion.

Section 11. Appeals. Following the Assistant Superintendent's determination regarding responsibility, either party may appeal to the Superintendent. An appeal should be submitted in writing within ten (10) days of the party's receipt of the Assistant Superintendent's determination. Note, appeals will only be considered if based on one of the following:

1. There was a procedural irregularity that affected the outcome of the matter;
2. 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; or
3. 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 or Respondent that affected the outcome of the matter.

Both parties shall have five (5) days after the submission of an appeal to submit a written statement in support of, or challenging the Superintendent's determination. The superintendent will issue a written decision describing the result of the appeal and the rationale for the result within thirty (30) days. The Superintendent's decision will be provided simultaneously to the parties.

Section 12. Retaliation. The District prohibits retaliation against persons who report, testify, assist, or participate or refuse to participate in any manner in an investigation, proceeding, or hearing. Retaliation includes 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.

Section 13. Recordkeeping. The District will maintain records from the investigation, determination, appeal, and informal resolution for seven (7) years.

Section 14. Reports Otherwise Required by Law. These procedures do not affect or alleviate mandatory reporting required by state or federal law, for example, reporting of suspected child abuse or neglect to law enforcement or Department of Child Services.

Legal Citations:

Title IX of the Education Amendments of 1972, 20 USC § 1681

34 CFR part 106

Clery Act, 20 USC § 1092

Violence Against Women Act (VAWA), 34 USC § 12291