



STUDENTS COMPLAINTS OF SEXUAL DISCRIMINATION/HARASSMENT – TITLE IX PROCEDURES

Employees and students in the Benton County School District are protected from sexual discrimination, including sexual harassment, by Title IX of the Education Amendment of 1972 to the Civil Rights Act. It is the intent of the Board to maintain an environment free from sexual harassment of any kind. Therefore, unwelcomed sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature amounting to or constituting harassment are prohibited.

Each employee in the district is a mandatory reporter of child abuse. The district will respond whenever any employee has notice of sexual harassment, including allegations of sexual harassment.

The district will ensure reasonable prompt timeframes are met for the completion of the grievance process, this includes filing and resolving appeals while accounting for delays such as law enforcement involvement, absence of a witness, party, etc. with written notice to both parties explaining the reasons for delay.

Parents/guardians of students have the right to act on behalf of the complainant, the respondent, or other individuals at any time.

GENERAL RESPONSE

The district will respond promptly to actual knowledge of sexual harassment in an educational program or activity in a manner that is not deliberately indifferent. The records should reflect that the district's response was not deliberately indifferent and that measures were taken to restore or preserve equal access to the educational program or activity. The district will treat complainants and respondents equitably by:

1. Offering supportive measures to a complainant, and
2. Following a grievance process before imposing any disciplinary sanctions on a respondent.

The Title IX Coordinator is required to contact the complainant promptly, even if a formal complaint has not been filed, to:

1. Discuss the availability of supportive measures,
2. Consider the complainant's wishes regarding supportive measures,
3. Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and
4. Explain the process for filing a formal complaint.

The district will provide the equitable treatment of the parties which includes:

1. Providing remedies to a complainant after a determination of responsibility against a respondent, and
2. Following a grievance process before imposing any disciplinary sanctions or other actions that are not supportive measures.
3. Remedies may include supportive measures but may also include punishing the respondent.

INFORMAL RESOLUTION

At any point during the formal complaint process, the district may offer to facilitate an informal process that does not require a full investigation as long as both parties receive written notice of their rights and the parties provide written, voluntary consent.

The district will obtain consent from the parents/guardians of a student in order to initiate an investigation where the complainant or alleged victim is under the age of eighteen (18), and will inform parents/guardians of the complainant that the complainant may be accompanied by a parent/guardian during all steps of the complaint procedure. If the complainant, school staff or others with professional knowledge relating to the complainant's health and well-being indicate that notifying the parents/guardians could cause serious harm to the health or well-being of the complainant or other person(s), the Title IX Coordinator will determine, in consultation with such individuals and upon advice of legal counsel, whether to withhold or delay notification of the report from the complainant's parents/guardians.

The district will ensure that no conflict of interest exists against a complainant or respondent by the Title IX Coordinator, investigator, decision-maker or any person designated to facilitate an informal process.

1. These individuals will be trained on the definition of sexual harassment, the scope of the district's program or activity, how to conduct an investigation and grievance process, hearings, appeals, and informal processes.
2. Investigators will be trained on how to prepare an investigation report.
3. Decision-makers will be trained on issues of evidence and questioning.

No offer can be made to facilitate an informal resolution process unless a formal complaint has been filed.

No offer can be made for an informal resolution in the context of a complaint alleging that an employee harassed a student.

FORMAL COMPLAINT PROCESS

- For all formal complaints, a preponderance of the evidence standard will be used.
- The Title IX Coordinator shall contact the parents/guardians and provide them with information regarding the report and Title IX sexual harassment procedures and grievance process for formal complaints.
- The complainant may file a formal complaint with the Title IX Coordinator by any method made available by the district. At the time of filing, the complainant must be participating in or attempting to participate in the educational program or activity of the educational institution. The Title IX Coordinator may sign a complaint which would trigger an investigation; however, this does not make the Title IX Coordinator a part in the grievance process. A formal grievance procedure in some cases may need to be implemented over the complainant's objection. Even if the complainant is not a willing participant in the investigation, the complainant will be informed of supportive measures and will be provided written notice of the steps in the grievance procedure.
- No hearing is required. School officials may determine that hearings will be held in certain circumstances. With or without a hearing, the district will provide each party the opportunity to submit, after completion of the investigative report, written, relevant questions that the party wants asked of another party or witness, provide each party with the answers, and provide for limited follow-up questions. No evidence or questions will be allowed that constitute or seek legally privileged information, unless that privilege is waived.
- The district will:
 1. Ensure that the burden of proof and gathering evidence rests on the district rather than the parties
 2. Provide an equal opportunity for the parties to present witnesses and evidence.
 3. Not restrict either party's ability to discuss the allegations or gather and present evidence.
 4. Provide the same opportunity to have others present during interviews or other proceedings, including an advisor.
 5. Provide written notice, to a party who is invited or expected to attend, the date, time, participants, purpose, and location of any investigative interview or other meeting with enough time to allow the party to prepare or participate.
 6. Provide both parties and their advisors, if any, an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint, including evidence on which the educational institution does not intend to rely and any exculpatory or inculpatory evidence from any source; must be provided prior to the completion of the

final investigative report and in time to give the parties at least ten (10) days to prepare a written response, which investigator must consider before completing the investigation report.

7. Prepare a written investigation report that fairly summarizes the relevant evidence and provide the report to the parties and their advisors at least ten (10) days before a determination of responsibility.
- The district will also provide written notice to all known parties, and the parents/guardians of know parties, where applicable, upon receipt of a formal complaint in sufficient time to give the respondent time to prepare a response before an initial interview. Notice will include the following:
 1. Notice of the grievance process, including any informal resolution process.
 2. Notice of the allegations with sufficient detail to allow the respondent to prepare a response (names, dates, conduct, location, etc.)
 3. A statement that the respondent is presumed not responsible for the conduct and responsibility will be determined at the conclusion of the grievance process.
 4. Notice of the parties' right to have an advisor (may be an attorney) and to inspect and review evidence.
 5. Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false information.

Appeal

- The district will offer both parties the right to appeal a determination of responsibility and the district 's dismissal of a complaint or any allegations for the following:
 1. A procedural irregularity that affected the outcome
 2. New evidence that was not reasonably available at the time of the determination and could affect the outcome, or
 3. Conflict of interest on the part of the Title IX Coordinator, investigator, or decision-maker that affected the outcome.
- The district will ensure that any appeal process is conducted in a timely manner and that the appeal decision-maker is free from any bias or conflicts of interest.
- The decision-maker cannot be the investigator or the Title IX Coordinator. The decision-maker must issue a written determination of responsibility that:

1. Identifies the allegations that potentially constitute sexual harassment
 2. Describes the district's procedural steps taken from the receipt of the complaint to the determination
 3. Includes findings of fact supporting the determination
 4. Includes conclusions regarding application of the code of conduct to the facts
 5. Includes a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions, and whether remedies to restore or preserve equal access to the district's program or activity will be provided to the complainant, and
 6. Includes procedures for appeals.
- The district will issue a written decision describing the result of the appeal and the rationale for the result. The district will also ensure that written notice is provided to both parties of the appeal and provide both parties an equal opportunity to submit a written statement in support of, or challenging, the determination. A written statement will be provided to both parties simultaneously.

RESPONDENT

A presumption will be given to the respondent that he/she is not responsible for the alleged conduct until a determination has been made at the conclusion of the grievance process. The district will objectively evaluate all available evidence without making credibility determinations based on a party's status as a complainant, respondent, or witness.

Title IX regulations allow the district to immediately remove a respondent from the education program or activity on an emergency basis if:

1. The district conducts an individualized safety and risk analysis, and
2. Determines that an emergency removal is necessary to protect a student or other individual from an immediate threat to physical health or safety
3. The district must provide the respondent with notice and an opportunity to challenge the decision immediately after removal.

CONSOLIDATION

Where allegations arise out of the same facts or circumstances, formal complaints can be consolidated against more than one respondent, by more than one complainant against one or more respondents, or by one party against another party.

DISMISSAL

The formal complaint must be dismissed if the allegations do not constitute sexual harassment as defined, the action did not occur in the district's program or activity, or the action did not occur against a person in the United States.

The formal complaint may be dismissed if:

1. The complainant notifies the Title IX Coordinator at any time that he/she wishes to withdraw the complaint or allegation,
2. If the respondent's enrollment or employment ends, or
3. If specific circumstances prevent the district from gathering evidence.

Notice of dismissal must be provided to both parties, including the reasons for dismissal.