



Capital School District

Board of Education Policy

Section: Human Resources
Title: Title IX Policy
Policy #: 500-28
Date Approved: 08/06/20
Date Presented: 08/06/20

Capital School District Title IX Policy

Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. §1681 *et seq.*, is a Federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities. All public schools, like Capital School District (“the District”), that receive any Federal funds must comply with Title IX.

Under Title IX, schools must operate free from sex discrimination, including sexual harassment.

Any of the following conduct on the basis of sex constitutes sexual harassment:

- A school employee conferring an educational benefit or service upon a person’s participation in unwelcome sexual conduct (often called “*quid pro quo*” harassment);
- 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 school’s education program or activity; or
- Sexual assault, dating violence, domestic violence, or stalking.

The District has a responsibility to respond promptly and equitably. If the District knows or reasonably should know about sex discrimination, sexual harassment, or sexual violence within the District’s education program or activity, the District will take immediate action to eliminate the sex discrimination, sexual harassment, or sexual violence, prevent its recurrence, and address its effects.

A criminal investigation into allegations of sexual harassment or sexual violence does not relieve the District of its duty under Title IX to resolve complaints promptly and equitably.

The District does not discriminate on the basis of sex, nor does it tolerate discrimination on the basis of sex in its education programs and activities. The District strives to provide an environment free from sex discrimination, including sexual harassment. The District encourages students, parents, and staff to identify barriers to a discrimination-free environment in all schools. Any person (*e.g.*, the alleged victim or any third party) may make a report to the Title IX Coordinator.

Complaints and/or inquiries concerning allegations of sexual harassment, or discrimination on the basis of sex, shall be directed to the District’s Title IX coordinator in person, or by phone, mail, or e-mail, or to the Office of Civil Rights. Any person (*e.g.*, the alleged victim or any third party) may report to the Title IX Coordinator. All complaints will be received and investigated in a prompt and equitable manner.

The District’s Title IX Coordinator is:

Director of Human Resources
Capital School District
198 Commerce Way
Dover, DE 19904
302.856.4215
mary.cooke@capital.k12.de.us

The Office of Civil Rights is located:
Office for Civil Rights, Philadelphia
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Tel: (215) 656-8541
Fax: (215) 656-8605
Email: *OCR.Philadelphia@ed.gov*

The Title IX Coordinator's responsibilities include overseeing all complaints of sex discrimination and sexual harassment, and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. If a report of sexual harassment is made to a District employee, the employee will inform the Title IX Coordinator.

When the Title IX Coordinator is aware of an allegation of sexual harassment, the Title IX Coordinator will promptly and confidentially reach out to the student alleging sexual harassment to discuss available options, including, but not limited to:

- The availability of supportive measures to restore access to the school's education program or activity with or without the filing of a formal complaint;
- The right to file a complaint to initiate an investigation into the sexual harassment allegations; and
- The process for filing a formal complaint.

The Title IX Coordinator will provide the complainant with information concerning the right to supportive measures even if no formal complaint is filed. The District will consider the alleged victim's wishes with respect to requests for supportive measures.

The respondent may also benefit from supportive measures. Supportive measures are free, individualized services designed to restore or preserve equal access to education, protect safety, or deter sexual harassment, not disciplinary or punitive, and without unreasonably burdening any other person. Examples of supportive measures may include:

- Counseling;
- Extensions of deadlines or other course-related adjustments;
- Modifications of work or class schedules;
- Campus escort services;
- Leave of absence;
- Increased security or monitoring of certain parts of campus; and/or
- Mutual restrictions on contact between individuals.

The District will keep confidential any supportive measures provided to the extent it does not impair the District's ability to provide the supportive measure. The Title IX Coordinator is responsible for coordinating the effective supportive measures.

FORMAL COMPLAINT OF SEXUAL HARASSMENT

A **formal complaint** is an official document alleging sexual harassment. The District will investigate the allegations set forth in a formal complaint.

A formal complaint must be submitted by the student, or the student's parent or legal guardian (in some cases), or signed by the Title IX Coordinator.

Formal complaints may be filed with the Title IX Coordinator in person, by mail, by telephone, or by email:

Director of Human Resources
Capital School District
198 Commerce Way
Dover, DE 19904
302.857.4215
Mary.cooke@capital.k12.de.us

Even if the student opts not to file a formal complaint, the Title IX Coordinator may decide to file a formal complaint on his/her own, which starts an investigation.

Emergency Removal: A respondent may be removed from education programs or activities on an emergency basis if the respondent poses an immediate threat to anyone's physical health or safety.

GRIEVANCE PROCESS:

The following are procedures for the grievance process for student and employee complaints of sexual harassment:

- The individuals involved in this grievance process are prohibited from discriminating against a complainant or respondent on the basis of sex.
- Prior to the interview of the respondent, both parties (the complainant and respondent) will receive written notice of the grievance process, notice of the allegations, the presumption of innocence of the respondent, an equal opportunity to select an advisor of the party's choice (who may be, but does not need to be, an attorney), an equal opportunity to submit, inspect, and review evidence throughout the investigation, and notice of the opportunity to engage in informal resolution.
- The District will provide written notice of the date, time, location, participants, and purpose of all hearings, interviews, or other meetings, with sufficient time for the party to prepare.
- The District will provide equal opportunities for the parties and their advisors to inspect and review the evidence obtained by the school as part of its investigation, if the information is directly related to the allegations raised in the formal complaint.
- The District will give the parties a meaningful opportunity to respond to the evidence after the District has provided it.
- After gathering evidence, the District will provide an investigative report on the allegations of the formal complaint. The parties will have 10 calendar days to respond to the report in writing. If responses are submitted, the District will consider the response before finalizing the investigative report.

- The investigative report will then be finalized and provided to the parties. The investigative report will be circulated to the parties at least another 10 calendar days before any determination of responsibility, or 10 calendar days before a hearing, if a hearing occurs.
- Temporary delays are permitted only for good cause. Good cause can include law enforcement activities, the absence of a party or witness, the absence of a party's advisor of choice, or the need to provide language assistance or accommodations of disabilities.
- The District will protect parties' privacy by requiring a party's written consent before using the party's medical, psychological, or similar treatment records during the grievance process.
- No information protected by a legal privilege, such as the attorney-client privilege or the doctor-patient privilege, can be used during an investigation unless the person holding that privilege has waived it. Neither a party nor the school is allowed to seek or permit questions about, or allow the introduction of evidence that is protected by a recognized privilege.
- The relevant evidence, including inculpatory and exculpatory evidence, will be objectively evaluated.
- Credibility determinations will not be made on the basis of a person's status as a complainant, respondent, or witness.
- The District will apply a presumption that the respondent is not responsible during the grievance process (often called a "presumption of innocence").
- The District bears the burden of proof and must correctly apply the standard of evidence. Any finding of responsibility comes at the conclusion of the grievance process. The District will use a preponderance of the evidence standard (the same standard will be used for formal complaints against students as for formal complaints against employees);
- The District will either hold a live hearing, or allow the parties to submit relevant written questions for the other parties and witnesses to answer prior to making a determination;
- If a live hearing is held, the parties' advisors are permitted to cross-examine other parties and witnesses. No party is permitted to cross-examine other parties and witnesses. If a party does not have an advisor, the District will provide the party with an advisor of the District's choosing, free of charge, solely for the purpose of conducting relevant cross-examination on that party's behalf. The advisor does not need to be a lawyer.
- If a party or witness chooses not to appear at the live hearing, or chooses not to answer cross-examination questions, the decision-maker will exclude that party's or witness's statements and will evaluate any evidence that does not involve those statements. The decision-maker will not make inferences about the determination regarding responsibility based on the fact that a party or witness did not come to the hearing or submit to cross-examination.
- If either party requests it, the entire hearing will be held with the parties located in separate rooms, with technology enabling everyone to see and hear each other.
- In order to better coordinate schedules, the District may choose to hold the entire live hearing virtually, or the District may allow some participants to appear virtually, with technology that allows everyone to see and hear each other.
- The District will comply with all disability laws, so that individuals with disabilities who participate in a school's grievance process are appropriately accommodated.
- The decision-maker will make a determination as to whether a question asked by a party advisor is relevant BEFORE the party or witness has to answer it.
- Questions and evidence about a complainant's prior sexual history are not relevant, with two limited exceptions:

1. Where such information is offered to prove that someone other than the respondent committed the alleged sexual harassment; or
 2. It relates to sexual behavior between the complainant and respondent offered to prove consent.
- The District will create an audio or audiovisual recording, or transcript, of any live hearing, and make it available to the parties for inspection and review.

DECISION-MAKER AND DETERMINATION OF RESPONSIBILITY:

- The District will ensure the decision-maker is not the same person as the investigator or the Title IX Coordinator and will ensure there are no other conflicts of interest or bias with any of the individuals involved in the grievance process.
- The District will ensure all decision-makers receive training regarding bias and relevancy of evidence.
- Whether or not a hearing was held, the District's decision-maker will objectively evaluate the relevant evidence and reach conclusions about whether the respondent is responsible for the alleged sexual harassment.
- The decision-maker will weigh the relevant evidence and decide whether it meets the District's standard of evidence for sexual harassment.
- The District will send the written determination simultaneously to the parties, along with information regarding how to appeal the determination.
- The decision-maker's written determination will include the following:
 1. The portion of the school/district's policy that was violated;
 2. A description of the procedural steps that were taken by the District;
 3. A findings of fact section;
 4. A section that draws conclusions after applying the facts to the portion of the school/district's policy that applies;
 5. A statement and rationale for the ultimate determination of responsibility;
 6. Any disciplinary sanctions that the District will impose on the respondent, and a statement regarding whether the District will provide remedies to the complainant;
 7. A statement and rationale for any remedies for the complainant, addressing how those remedies will restore and preserve equal access; and
 8. A statement of the District's procedures that the parties have a right to appeal the initial determination regarding responsibility, and the permissible bases for appeal.
- If a respondent is found responsible for sexual harassment, the District will effectively implement remedies for a complainant designed to preserve or restore equal access to the school's education program or activity.
- A complainant's remedies can be disciplinary against the respondent and can range from a disciplinary referral to a recommendation for expulsion depending on the circumstances. Supportive measures such as the following may also be implemented:
 - Counseling;
 - Extensions of deadlines or other course-related adjustments;
 - Modifications of work or class schedules;
 - Campus escort services;
 - Leave of absence;
 - Increased security or monitoring of certain parts of campus; and/or

- Mutual restrictions on contact between individuals (if there is a determination of sexual harassment, a no-contact restriction may be implemented).
- **Dismissal of Complaints:**
 - **Mandatory Dismissals**
 - The District must dismiss a complaint that:
 - Does not describe conduct that meets the definition of sexual harassment;
 - Alleges sexual harassment that did not occur in the District's education program or activity; and/or
 - Alleges sexual harassment that did not occur in the United States at all.
 - These complaints may be addressed under the code of conduct depending on the circumstances.
 - **Discretionary Dismissals:**
 - The District may dismiss a complaint if:
 - If the complainant notifies the Title IX coordinator in writing that the complainant wishes to withdraw the formal complaint or some of its allegations;
 - If the respondent is not enrolled in, or employed by, the District; or
 - If specific circumstances prevent the school from gathering evidence sufficient to reach a determination about the allegations.
 - In the event of a dismissal of a formal complaint, the District will promptly send written notice of the dismissal and the reasons to both parties. Either party has the option to appeal the decision.
- Individuals involved in the process will be trained in accordance with Title IX regulations, and the materials used to train Title IX personnel are available on the District's website.

APPEAL OF THE DETERMINATION OF RESPONSIBILITY:

The complainant or respondent may appeal the decision-maker's determination of responsibility or the dismissal of a formal complaint, to the Superintendent (or designee) within 10 calendar days of receiving the determination of responsibility or the notice of dismissal. The appeal decision-maker will not be the same individual who made the determination of responsibility, the investigator, or the Title IX Coordinator.

The following are permissible grounds for an appeal:

1. A procedural irregularity affected the outcome of the matter;
 2. New evidence has been discovered that was not reasonably available at the time of the determination on responsibility or dismissal; and/or
 3. A conflict of interest on the part of the Title IX Coordinator, an investigator who compiled evidence, or a decision-maker, and the conflict of interest affected the outcome.
- If a party files an appeal, the District will notify the parties in writing, and will implement appeal procedures equally.
 - Both parties will have the opportunity to submit a written statement supporting or challenging the outcome.
 - After considering the parties' written statements, the Superintendent (or designee) will issue a written decision no later than 15 calendar days from the parties' written submission and send it to the parties simultaneously.

- The Superintendent's (or designee's) determination regarding whether the respondent is responsible for the sexual harassment allegations becomes final after appeal.

INFORMAL RESOLUTION PROCESS

- In appropriate cases, the District may explore the facilitation of a voluntary, informal resolution of the formal complaint. This is not an option in any case where the respondent is a District employee.
- The District will only attempt informal resolution if each party enters the process completely voluntarily. No party will ever be forced or coerced into engaging in an informal resolution.
- The District will obtain the parties' voluntary, written consent before using any type of informal resolution process, such as mediation or restorative justice.
- The District will provide a facilitator who is free from conflicts of interest or bias, and who has received special training.
- Even in situations where the parties engage in voluntary informal resolution, the District will provide the complainant and respondent with notice of the allegations, notice of their rights, information about whether an informal process is confidential, and assurance that any party may withdraw from the informal resolution process at any time before an agreement is reached.

RECORD KEEPING

The District will maintain the following records for 7 years:

1. Records of a school's investigation;
2. Records of any appeal and the materials associated with the appeal;
3. Materials used to train Title IX Coordinators, investigators, decision-makers, and anyone who facilitates an informal resolution; and
4. Records of supportive measures that the District took in response to a report or complaint of sexual harassment.

PROHIBITION OF RETALIATION

The District prohibits retaliation against any individual, including complainants, respondents, and witnesses, for reporting sexual harassment or participating (or refusing to participate) in any Title IX grievance process.

If any individual feels that he or she has been threatened, coerced, or discriminated against in an effort to chill the exercise of Title IX rights, then he or she should make a report of retaliation. All complaints of retaliation should be reported to the Title IX Coordinator or the District's Superintendent, and the District will ensure a prompt and equitable resolution of the complaint. It is not retaliation for the District to punish an individual for making a bad faith, materially false, statement during a Title IX grievance process. Additionally, engaging in protected speech under the First Amendment does not constitute retaliation.

The District will keep the identities of parties and witnesses confidential unless disclosure of an individual's identity is required under other laws or is necessary in order to conduct the grievance process.

Any individual shall have the right to file a formal complaint with the U.S. Department of Education, Office of Civil Rights at any time.

Office for Civil Rights, Philadelphia
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107
Tel: (215) 656-8541
Fax: (215) 656-8605
E-mail: *OCR.Philadelphia@ed.gov*
OCR Electronic Complaint Form:
<http://www.ed.gov/about/offices/list/ocr/complaintintro.html>