

Hamilton County Board of Education			
Monitoring: Review: Annually	Descriptor Term: Title IX & Sexual Harassment	Descriptor Code: 6.3041	Issued Date: 10/08/20
		Rescinded:	Revised:

General

In order to maintain a safe, civil, and supportive learning environment for all students, all forms of sexual harassment and discrimination on the basis of sex are prohibited.¹ This policy shall cover employees, employees' behaviors, students, and students' behaviors while on school property, at any school-sponsored activity, on school-provided equipment or transportation, or at any official school bus stop in accordance with federal law. This policy shall be disseminated annually to all school staff, students, and parent(s)/guardian(s).²

The Title IX Coordinator as well as any personnel chosen to facilitate the grievance process shall not have a conflict of interest against any party of the complaint.³ These individuals shall receive training as to how to promptly and equitably resolve student and employee complaints.³

All employees shall receive training on complying with this policy and federal law.⁴

TITLE IX COORDINATOR⁵

The Title IX Coordinator shall be responsible for the school system's Title IX obligations, including training and response to complaints. He/she shall respond promptly to all general reports and formal complaints of sexual harassment. He/she shall be kept informed by school-level personnel of all investigations and shall provide input on an ongoing basis as appropriate.

Any individual may contact the Title IX Coordinator at any time using the information below:

Title: Title IX Coordinator

Mailing address: 1161 West 40th Street Room 310

Phone number: (423) 498-7221

DEFINITIONS⁴

"Complainant" is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

"Respondent" is an individual who is reported to be the perpetrator of conduct that could constitute sexual harassment.

"Sexual harassment" is conduct on the basis of sex that satisfies one or more of the following.³

1. A school district employee conditioning an aid, benefit, or service of an education program or activity on an individual's participation in unwelcome sexual conduct;

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 the education program or activity; or
3. Sexual assault,⁶ dating violence,⁷ domestic violence,⁸ or stalking⁹ as defined in state and federal law.

Behaviors that constitute sexual harassment may include, but are not limited to:

1. Sexually suggestive remarks;
2. Verbal harassment or abuse;
3. Sexually suggestive pictures;
4. Sexually suggestive gesturing;
5. Harassing or sexually suggestive or offensive messages that are written or electronic;
6. Subtle or direct propositions for sexual favors; and
7. Touching of a sexual nature.

Sexual harassment may be directed against a particular person or persons, or a group, whether of the opposite sex or the same sex.

“Supportive measures” are non-disciplinary, non-punitive, individualized services and shall be offered to the complainant and the respondent, as appropriate. These measures may include, but are not limited to, the following:

1. Counseling;
2. Course modifications;
3. Schedule changes; and
4. Increased monitoring or supervision.

The measures offered to the complainant and the respondent shall remain confidential to the extent that maintaining such confidentiality would not impair the ability of the school district to provide the supportive measures.

GRIEVANCE PROCESS

Upon learning of an instance of alleged sexual harassment, even if no formal complaint is filed, the Title IX Coordinator or his/her designee shall:

1. Promptly contact the complainant to discuss the availability of supportive measures;
2. Consider the complainant’s wishes with respect to supportive measures;
3. Inform the complainant of the availability of supportive measures; and
4. Explain the process for filing a formal complaint.¹⁰

While the school district will respect the confidentiality of the complainant and the respondent as much as possible, some information may need to be disclosed to appropriate individuals. All disclosures shall

be consistent with the school district's legal obligations and the necessity to investigate allegations of harassment and take disciplinary action.

Disciplinary consequences or sanctions shall not be initiated against the respondent until the grievance process has been completed. Unless there is an immediate threat to the physical health or safety of any student arising from the allegation of sexual harassment that justifies removal, the respondent's placement shall not be changed.¹¹ If the respondent is an employee, he/she may be placed on administrative leave during the pendency of the grievance process.¹² The Title IX Coordinator shall keep the Director of Schools informed of any employee-respondents so that he/she can make any necessary reports to the State Board of Education in compliance with state law.¹³

Complaints

Any individual who has knowledge of behaviors that may constitute a violation of this policy shall immediately report such information to the Title IX Coordinator; however, nothing in this policy requires a complainant to either report or file a formal complaint within a certain timeframe. If the complaint involves the Title IX Coordinator, the complaint shall be filed with the Director of Schools.

If a complaint involves allegations of child abuse, including child abuse on school grounds, appropriate notification shall be made per the board policy on reporting child abuse.

Upon receipt of a formal complaint, the Title IX Coordinator shall promptly.¹⁴

1. Provide written notice of the allegations, and the grievance process to all known parties to give the respondent time to prepare a response before an initial interview;
2. Inform the parties of the prohibition against making false statement or knowingly submitting false information;
3. Inform the parties that they may have an advisor of their choosing present during any subsequent meetings;
4. Notify parents and/or guardians that they are entitled to participate; and
5. Offer supportive measures in an equitable manner to both parties.

The complaint must be dismissed if it does not meet the definition of harassment or occur within an activity or program. If the Title IX Coordinator dismisses a complaint, written notice, including the reasons for dismissal, shall be provided to both parties simultaneously.¹⁵

Investigations¹⁶

All investigations require a signed, written complaint. A school system administrator, designated by the Title IX Coordinator, shall serve as the investigator and be responsible for investigating complaints in an equitable manner that involves an objective evaluation of all relevant evidence. The burden for obtaining evidence sufficient to reach a determination regarding responsibility rests on the school district and not the complainant or respondent.

Once a complaint is received, the investigator shall initiate an investigation within forty-eight (48) hours of receipt of the complaint. If an investigation is not initiated within forty-eight (48) hours, the investigator shall provide the Title IX Coordinator with appropriate documentation detailing the reasons why the investigation was not initiated within the required timeframe.

All investigations shall be completed within twenty (20) calendar days from the receipt of the initial complaint. If the investigation is not complete within twenty (20) calendar days, the investigator shall provide the Title IX Coordinator with appropriate documentation detailing the reasons why the investigation has not been completed.

All investigations shall:

1. Provide an equal opportunity for the parties to present witnesses and evidence;
2. Not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence;
3. Refrain from requiring, allowing, relying upon, or otherwise using questions or evidence that seek disclosure of information protected under a legally recognized privilege unless such privilege has been waived;¹⁷
4. Provide the parties with the same opportunities to have others present during any grievance proceeding;
5. Provide to parties whose participation is requested written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
6. Provide both parties an equal opportunity to inspect and review any evidence directly related to the allegations in the formal complaint; and
7. Result in the creation of an investigative report that fairly summarizes relevant evidence.
 - a. Prior to the completion of the investigative report, the investigator shall send to each party the evidence subject to inspection and review. All parties shall have at least ten (10) days to submit a written response which shall be taken into consideration in creating the final report.

Within the parameters of the federal Family Educational Rights and Privacy Act,¹⁸ the Title IX Coordinator shall keep the complainant and the respondent informed of the status of the investigation process. At the close of the investigation, a written final report on the investigation will be delivered to the parent(s)/guardian(s) of the complainant, parent(s)/guardian(s) of the respondent, and to the Director of Schools.

Determination of Responsibility¹⁹

The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.²⁰ The preponderance of evidence standard shall be used in making this determination.²¹

The Principal shall act as the decision-maker for student-respondents. The Human Resources Director will act as the decision-maker for employee-respondents. He/she shall receive the final report of the

investigation and allow each party the opportunity to submit written questions that he/she wants asked of any party or witness prior to the determining responsibility.

The decision-maker shall make a determination regarding responsibility and provide a written determination to the parties simultaneously along with information about how to file an appeal. He/she may consult with the Title IX Coordinator in drafting the written determination.

A substantiated charge against a student may result in corrective or disciplinary action up to and including expulsion. A substantiated charge against an employee shall result in disciplinary action up to and including termination.

After a determination of responsibility is made, the Title IX Coordinator shall work with the complainant to determine if further supportive measures are necessary. The Title IX Coordinator shall also determine whether any other actions are necessary to prevent reoccurrence of the harassment.

APPEALS²²

Either party may appeal from a determination of responsibility based on a procedural irregularity that affected the outcome, new evidence that was not reasonably available at the time of the determination that could affect the outcome, or an alleged conflict of interest on the part of the Title IX Coordinator, the investigator, or any personnel chosen to facilitate the grievance process. Appeals shall be submitted to the Title IX Coordinator within ten (10) days of a determination of responsibility.

Upon receipt of an appeal, the Title IX Coordinator shall:

1. Assign an impartial hearing officer within five (5) days of receipt of the appeal.
 - a. Appeals for cases in which the respondent is a student shall be to the Board's Disciplinary Hearing Authority.
 - b. Appeals for cases in which the respondent is an employee shall be to the Director of Schools.
2. Notify the parties in writing, who will be hearing the appeal, and the procedures that the hearing officer(s) will be following in the appeal. This notice may refer to other Board Policies that explain disciplinary procedures.

During the appeal process, the parties shall have a reasonable, equal opportunity to submit written statements. Within ten (10) calendar days, the hearing officer shall issue a written decision describing the result of the appeal and the rationale for the result. The written decision shall be provided simultaneously to both parties.

RETALIATION²³

Retaliation against any person who makes a report or complaint or assists, participates, or refuses to participate in any investigation of an act alleged in this policy is prohibited.

Legal References:

1. 34 CFR § 106.1
2. 34 CFR § 106.8(b),(c)
3. 34 CFR § 106.45(b)(1)(iii); 34 CFR § 106.45(b)(10)(D)
4. 34 CFR § 106.30(a)
5. 34 CFR § 106.8(a)
6. 20 USCA 1092(f)(6)(A)(v); TCA 36-3-601(10); TCA 71-6-302
7. 34 USCA 12291(a)(10)
8. 34 USCA 12291(a)(8); TCA 40-14-109
9. 34 USCA 12291(a)(30); TCA 39-17-315; TCA 36-3-601(11)
10. 34 CFR § 106.44(a)
11. 34 CFR § 106.44(c)
12. 34 CFR § 106.44(d)
13. TRR/MS 0520-02-03-.09(2); TCA 49-5-417(c)
14. 34 CFR § 106.45(b)(2)
15. 34 CFR § 106.45(b)(3)
16. 34 CFR § 106.45(b)(5); 34 CFR § 106.45(b)(1)(v)
17. 34 CFR § 106.45(b)(1)(x)
18. 20 USCA § 1232g
19. 34 CFR § 106.45(b)(7)
20. 34 CFR § 106.45(b)(1)(iv)
21. 34 CFR § 106.45(b)(1)(vii)
22. 34 CFR § 106.45(b)(8)
23. 34 CFR § 106.71

Cross References:

Section 504 and ADA Grievance Procedures 1.802
Discrimination/Harassment of Employees (Sexual,
Racial, Ethnic, Religious) 5.500
Staff-Student Relations 5.610
Code of Conduct 6.300
Student Discrimination, Harassment, Bullying,
Cyberbullying, and Intimidation 6.304
Child Abuse and Neglect 6.409