



Book	Policy Manual
Section	100 Programs
Title	Nondiscrimination on the Basis of Sex in School and Classroom Practices
Code	103.1
Status	Active
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### **Purpose**

The Joint Committee strives to provide a safe and positive learning climate for students and a safe and positive environment for all employees in the school. Harassment on the basis of sex is a form of unlawful harassment prohibited by Title IX, and will not be tolerated in any form.

### **Authority**

The Joint Committee adopts this policy to comply with requirements set forth by the U.S. Department of Education Final Rule, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, published in the Federal Register on May 19, 2020, after notice and comment rulemaking.

### **What is Title IX?**

Title IX is a federal civil rights law which states:

No person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

### **Definition of Sexual Harassment**

For purposes of this policy, **sexual harassment** of students is defined as conduct on the basis of sex that satisfies one or more of the following: [\[1\]](#)

1. An employee of the school's conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct; also called *quid pro quo* (this for that) 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 the school's education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking.

Note that the qualification of "severe, pervasive, and objectively offensive" applies only to "unwelcome conduct," and does not apply to incidents of *quid pro quo* sexual harassment, sexual assault, dating violence, domestic violence, or stalking. A single incident of these offenses is sufficient to constitute sexual harassment.

Also note that sexual assault, dating violence, domestic violence, and stalking are added to the definition of **sexual harassment** to align the elementary and secondary school definition of sexual

harassment with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), which is applicable to postsecondary institutions, and to harmonize compliance obligations under both Title IX and the Clery Act. Although elementary and secondary schools are not subject to the Clery Act, under the 2020 Title IX Regulations, schools must look to the Clery Act in order to address these forms of sexual harassment if applicable. However, in no way do these definitions supersede the requirements that to be actionable under Title IX, the sexual harassment complained of must take place in the context of the school or school's education program or activity, as described below.

### **Examples of Sexual Harassment**

Sexual harassment can be verbal, nonverbal, or physical conduct of a sexual nature. Examples of conduct that constitutes sexual harassment include, but are not limited to, sexual flirtations, advances, touching, or propositions; verbal abuse of a sexual nature; graphic or suggestive comments about an individual's dress or body; sexually degrading words to describe an individual; jokes; pin-ups; calendars; objects; graffiti; vulgar statements; abusive language; innuendoes; references to sexual activities; or overt sexual conduct.

Since sexual harassment is conduct, it can occur to any individual, regardless of sex, gender orientation or transgender status. Every person, regardless of demographic or personal characteristics or identity, e.g., LGBTQ or transgender, is entitled to the same protections from sexual harassment under this policy, and every individual will be treated with equal dignity and respect.

### **Additional Definitions**

**Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to a school's Title IX Coordinator or to any employee of the school.

**Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. An individual will have status as a complainant only if the individual is participating, or attempting to participate, in the school's education program or activity, as defined below, at the time of the alleged sexual harassment.

**Dating violence** means violence committed by a person: [\[2\]](#)

1. Who is or has been in a social relationship of a romantic or intimate nature with the victim, and
2. Where the existence of such a relationship will be determined based on a consideration of the following factors:
  - a. The length of the relationship.
  - b. The type of relationship.
  - c. The frequency of interaction between the persons involved in the relationship.

**Deliberate indifference** means that the school's response to sexual harassment is clearly unreasonable in light of the known circumstances.

**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 who is 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 the jurisdiction receiving grant monies, 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 the jurisdiction. [\[2\]](#)

**Due process** means that an accused perpetrator is entitled to presumption of non-responsibility, notice of the accusation, and a meaningful opportunity to respond to the allegation(s) in a meaningful time.

**Education program or activity** includes locations, events, or circumstances in which the school exercises substantial control over both the respondent and the context in which the sexual harassment occurs. [1][3][4]

**Formal complaint** means a document signed by a complainant and the Title IX Coordinator, or independently by the Title IX Coordinator, alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school. However, a formal complaint is not required for supportive measures that must be provided to anyone filing a formal or informal complaint. [1][4]

**Rape shield laws** limit the introduction of evidence or cross-examination of a rape complainant about past sexual behavior.

**Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Sexual assault** means any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. [5]

**Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: [2]

1. Fear for his/her safety or the safety of others; or
2. Suffer substantial emotional distress.

### **When and Where Title IX Applies**

Title IX prohibits sexual harassment that happens in the United States in a school's education program or activity. This includes locations, events, or circumstances where:

1. The sexual harassment occurred as part of the school's operations, and
2. The school exercised substantial control over the alleged harasser and the circumstances in which the harassment occurred.

If the Title IX Coordinator decides that a complaint of sexual harassment does not meet the definition of sexual harassment in the Title IX Regulations as listed above, the Title IX Coordinator may dismiss the complaint as not a violation of Title IX. However, the alleged misconduct may violate a provision of the Student Code of Conduct, and the school may apply the applicable provision(s) of the appropriate Student Code of Conduct to resolve the complaint.

### **Delegation of Responsibility**

The Joint Committee designates the Title IX Coordinator as the school's Compliance Officer for this policy.

The Title IX Coordinator will publish and disseminate this policy and the complaint procedures to student, parents/guardians, employees, independent contractors, vendors, and the public.

The Title IX Coordinator will be trained in the requirements of this sexual harassment policy, and the identification and contact information for the Title IX Coordinator will be widely disseminated throughout the school by posting of information on the school website and written notices in every building and in school publications.

### **Duties of the Title IX Coordinator**

The Title IX Coordinator must be free from conflicts of interest and bias and trained in how to serve impartially and avoid prejudgment of the facts at issue. The Title IX Coordinator may develop and

deliver awareness and educational programming for faculty, staff, students, parents, and community members.

The Title IX Coordinator will:

1. Maintain current contact information and notices of nondiscrimination on the basis of sex in every school building and publication.
2. Disseminate and implement this policy.
3. Receive reports of sexual harassment in any mode, in person, online, telephone or U.S. mail, at any time, including non-business hours, through the contact information widely disseminated.
4. Act promptly upon receipt of a complaint, providing to the complainant information about supportive measures and abiding by the desires of the complainant, notifying the complainant about the right to file a complaint and information on how to file a complaint. Supportive measures may also be provided to the respondent.
5. Advise the complainant of the option of informal resolution of complaints, e.g., by mediation.
6. Sign formal complaints along with the complainant (or the complainant's parents or legal caregiver) to initiate an investigation.
7. Dismiss complaints on written notice from the complainant or complaints that do not meet the definition of sexual harassment above.
8. Initiate and conduct an investigation of the complaint, or appoint an alternate or co-investigator.
9. Keep records of the investigative steps, conduct interviews of complainant and respondent, document witnesses' statement, compile the investigative report.
10. Arrange for live hearings, if they are to be conducted, and train in use of any technology to be used during a live hearing.
11. Be aware of and look for and document patterns of complaints and patterns of allegations against individual respondents.

If the Title IX Coordinator is the subject of the complaint, the Joint Committee will appoint a qualified independent investigator to handle the complaint.

The Title IX Coordinator must maintain the records of all investigations for seven (7) years.

Note that the completion of the written investigative report, the Title IX Coordinator must turn the investigation over to an independent decision-maker who will determine whether sexual harassment occurred and impose disciplinary sanctions as appropriate. The decision-maker will reach a determination regarding responsibility by applying the standard of evidence the school has designated for use in all formal complaints of harassment, the preponderance of evidence standard. The decision-maker must then send both parties simultaneously a written determination as described below in the Grievance Process.

### **Notice of Sexual Harassment**

The school receives notice of sexual harassment when a complaint is made to the Title IX Coordinator or to any employee of the school.

### **Who May File a Title IX Complaint**

Any person, whether the person is the alleged victim or a parent, friend, or witness to sexual harassment, may file a complaint of sexual harassment. Complaints may also be filed anonymously.

No statute of limitations applies to filing a complaint of sexual harassment.

### **School Response to Notice of Sexual Harassment**

When notice of sexual harassment is received by the Title IX Coordinator or by any school employee, the school is considered to have actual knowledge of the complaint of sexual harassment, and has a duty to respond in a manner that is not deliberately indifferent. The school's response will be considered deliberately indifferent only if it is clearly unreasonable.

Upon receipt of the complaint, the Title IX Coordinator will provide reasonable and appropriate supportive measures to the complainant, as defined below, in order to restore or preserve equal educational access, without treating a respondent as responsible until the conclusion of a fair and impartial grievance process as described below. The Title IX Coordinator will take the wishes of the complainant into consideration, but not unduly burden the respondent. The Title IX Coordinator may also provide supportive measures to the respondent, as appropriate.

The respondent to a complaint of sexual harassment may be removed from school on an emergency basis if reasonable threat of harm is present. If the respondent is an employee, the employee may be placed on administrative leave during the investigation. In both cases of emergency removal or placement on administrative leave, the due process rights of the accused must be preserved by providing notice of charges and an opportunity to respond.

### **Supportive Measures**

**Supportive measures** mean nondisciplinary, nonpunitive individualized services offered as appropriate, and as reasonably available, without fee or charge to the complainant, before or after the filing of a formal complaint, or where the complainant indicates no formal complaint will be filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. The Title IX Coordinator must take the wishes of the complainant into consideration, and must keep the supportive measures confidential.[\[1\]](#)[\[4\]](#)

In order to treat both complainant and respondent equally, the Title IX Coordinator must offer supportive measures to the respondent, under the same conditions as described above.

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, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The recipient must maintain as confidential and supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

This definition of supportive measures permits a wide range of individualized services intended to meet the purposes stated above and to fulfill school obligations under IDEA, Section 504, and ADA.

### **Retaliation**

Retaliation for reporting a complaint of sexual harassment is prohibited. However, prohibition of retaliation will not chill or infringe an individual's fundamental First Amendment rights.

### **Making False Statements**

Intentionally making false statements in bad faith may be disciplined under the school's code of conduct.

### **The Grievance Process**

## **A. Basic Requirements of the Grievance Process**

The school's grievance process will:

1. Treat complainants and respondents equitably by providing supportive measures to the complainant and respondent that does not unreasonably burden the respondent and by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent.
2. Design remedies so that equal access to the school's education program or activity is restored or preserved. Remedies will require an objective evaluation of all relevant evidence - including both inculpatory and exculpatory evidence - and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
3. Authorize the Title IX Coordinator as investigator, with authority to designate alternate investigators or co-investigators.
4. Ensure that all investigators receive training to identify relevant issues and collect those issues in the summary of the investigation.
5. Include a presumption that the respondent is not responsible for the alleged conduct until a responsibility determination is made at the conclusion of the grievance process.
6. Include in the grievance process reasonably prompt time frames for conclusion of the process, including reasonably prompt time frames for filing and resolving appeals, and a process that allows for a temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
7. May not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, for example, physician-patient confidentiality or rape shield laws, unless the person holding such privilege has waived the privilege.
8. Will, as stated above, ensure that the Title IX Coordinator retain all records pertaining to the investigation, determination of responsibility, outcome of any appeal(s), and documentation of supportive measures and remedies for seven (7) years.
9. Provide that all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process be made public upon request for inspection by members of the public.

## **B. Informal Resolution of Complaints**

1. An informal resolution process that does not involve a full investigation and adjudication, such as mediation, may be initiated, but only after the complainant has filed and signed a formal complaint with the Title IX Coordinator.
2. Voluntary written requests from both parties seeking informal resolution must be provided to the Title IX Coordinator.
3. The Title IX Coordinator must provide the parties with a written notice disclosing the allegations.
4. The informal resolution process may be initiated even after a formal complaint investigation has begun, at any time prior to reaching a determination regarding responsibility.

5. The informal resolution process cannot be used in any case where a school employee is charged with sexually harassing a student.
6. At any time prior to agreeing to a resolution of the complaint any party has the right to withdraw from the informal resolution process and resume the formal grievance process.
7. For an informal resolution, any individual designated to facilitate the informal resolution will be trained in the provisions of this policy and in informal resolution processes, and must be free from conflict and bias.

The informal resolution process cannot be used to resolve allegations that an employee sexually harassed a student.

### **C. Formal Resolution of Complaints**

Upon receipt of a formal complaint, signed by the complainant, the Title IX Coordinator must provide the following written notice to the complainant and respondent, if known:

1. Notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time and giving parties sufficient time to prepare a response before any initial interview.
2. Notice of the elements of the school's grievance process, including any informal resolution process.
3. Notice 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. Notice that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and that they may inspect and review evidence.
5. Notice that knowingly making false statements or knowingly submitting false information during the grievance process is prohibited.

The Title IX Coordinator may proceed to file a formal complaint independently, against the wishes of the complainant. However, if the Title IX Coordinator signs the complaint independently, the Title IX Coordinator must state specific, clear circumstances justifying signing a complaint to initiate an investigation despite the wishes of the complainant, and to support whatever choice is made.

If the Title IX Coordinator decides to investigate allegations about the complainant or respondent that are not included in the original notice, the Title IX Coordinator must advise the parties.

### **D. Investigation of Formal Complaints**

When investigating a formal complaint, the Title IX Coordinator and any co-investigator(s), as well as any investigators appointed by the Title IX Coordinator must:

1. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
2. Not restrict either party from discussing the allegations under investigation or from gathering and presenting relevant evidence.
3. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. However, the investigator may establish restrictions regarding the extent to which any advisor may participate in the proceeding, and these restrictions must be applied uniformly to all advisors.
4. Provide, to a party whose participation is invited or expected, written notice of the allegations potentially constituting sexual harassment.

5. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation.

Prior to completion of the investigative report, the Title IX Coordinator must send to each party and the party's advisor, if any, the evidence subject to inspection and review, in an electronic format or a hard copy, and the parties must have at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report.

The Title IX Coordinator will create an investigative report that fairly summarizes relevant evidence and, at least ten (10) days prior to a live hearing (if a hearing will be scheduled), send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

## **E. Dismissal of Formal Complaints**

The Title IX Coordinator may dismiss a formal complaint if the conduct alleged in the formal complaint:

1. Would not constitute sexual harassment even if proved,
2. Did not occur in the school's education program or activity,
3. The complainant requests dismissal of the complaint in writing, or
4. If the conduct did not occur against a person physically in the United States.

The Title IX Coordinator may also dismiss the complaint if the respondent is no longer enrolled or employed by the school; or specific circumstances prevent the Title IX Coordinator from gathering evidence sufficient to determine if sexual harassment occurred. If the formal complaint is dismissed, the Title IX Coordinator must promptly send written notice of the dismissal and reason(s) simultaneously to the parties.

## **F. Live Hearings**

The provision of a live hearing in a resolution of a formal complaint is optional at the elementary and secondary levels. If the school grievance process requires a live hearing, the hearing will be held after the Title IX Coordinator has sent the investigative report to the parties and before a determination of responsibility is final. The Title IX Coordinator will not be the decision-maker at the live hearing; another trained individual will conduct the live hearing.

If a live hearing is scheduled, either party to the formal complaint may request that the parties and their advisors be in separate rooms and communicate via technology and not in person. Advisors to the parties, but not the actual parties, may question and cross-examine parties and witnesses on relevant issues and evidence, and make credibility determinations, but the decision-maker at the live hearing may refuse to admit non-relevant questions. The decision-maker may also limit the opportunity for advisors to participate.

If a party does not have an advisor who can be present at the live hearing, the school must provide an advisor of the school's choice without fee or charge to that party. The advisor provided may be, but is not required to be, an attorney. The Title IX Coordinator must see that an audio or audiovisual recording or transcript of any live hearing is created, and make a copy available to the parties for inspection and review.

If a live hearing is not part of the school's grievance process, after the Title IX Coordinator has sent the investigative report to the parties and before a determination of responsibility is final, the decision-maker who now takes over must allow each party the opportunity to submit written relevant questions to any party or witness, receive answers, and allow for additional limited follow-up questions from each party.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged.



## **Determination of Responsibility**

After the Title IX Coordinator creates the investigative report, the Title IX Coordinator must hand over the report to an independent decision-maker who will issue a written determination regarding responsibility that specifies the evidentiary standard used in the determination. The Bethlehem Area Vocational-Technical School employs the preponderance of evidence standard in all determinations of responsibility for sexual harassment under Title IX.

The written determination must be provided to both parties simultaneously and must include the following:

1. Identification of the allegations potentially constituting sexual harassment.
2. 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, methods used to gather other evidence, hearings held and any other relevant procedural steps.
3. Findings of fact supporting the determination.
4. Conclusions regarding the application of the school's Code of Student Conduct or Joint Committee policies to the facts.
5. A statement of the result and rationale for each allegation, including any disciplinary sanctions for the respondent, and whether remedies will be provided to the complainant.

The final determination must also provide information about procedures and bases for a timely appeal available to either party. If an appeal is filed, the determination becomes final on the date the appeal decision is supplied in writing to the parties. If neither party files a timely appeal, the determination is final when the appeal time limit expires.

## **The Appeals Process**

Appeals can be filed for:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that became available and that could have affected the outcome of the matter; or
3. A provable conflict interest or bias on the part of the Title IX Coordinator, investigator(s), or decision-maker(s).

A new impartial decision-maker(s) not previously involved with the case must decide the appeal and provide a written decision simultaneously to both parties describing the result of the appeal and the rationale for the result.

When the final determination of responsibility is made and appeals are exhausted, the Title IX Coordinator is responsible for effective implementation of any remedies.

## **Publications Required**

The provisions of this policy will be disseminated throughout the school and community and training in the policy requirements will be provided to employees, including staff and faculty, students, parents, and community members.

Legal

1. 34 CFR 106.30
  2. 34 U.S.C. 12291
  3. 34 CFR 106.44
  4. 34 CFR 106.45
  5. 20 U.S.C. 1092
- 34 CFR Part 106
- Pol. 103