

Title IX Sexual Harassment Policy

I. Purpose

The District is committed to providing a safe and secure working and learning environment free from all forms of sex-based discrimination, including sexual harassment. The purpose of this policy and procedure is to address Sexual Harassment (as defined in *Title IX of the of the Education Amendments of 1972*) that occurs within the educational programs and activities of the District, and to provide a grievance process for investigating and reaching a final Determination of Responsibility for a Formal Complaint of Sexual Harassment. Educational programs and activities include locations, events, or circumstances over which the District exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs.

II. Application

This Policy applies to all students, applicants, employees, and any third party who contracts with the District to provide services to District students or employees, upon District property, or during any school program or activity.

III. Definitions

These definitions apply to the Title IX Sexual Harassment Policy and Procedure.

“Complainant” is an individual who is alleged to be the victim of conduct that could constitute sexual harassment, whether or not that person files a report or Formal Complaint.

“Days” shall mean calendar days.

“Decision Maker” means person(s) tasked with the responsibility of making initial determinations of responsibility with respect to Formal Complaints of Sexual Harassment.

“Determination of Responsibility” is the formal finding by the Decision Maker on each allegation of Sexual Harassment contained in a Formal Complaint that the Respondent did or did not engage in conduct constituting Sexual Harassment under Title IX.

“Formal Complaint” means a document filed by a Complainant, the Complainant’s parent/guardian, or the Title IX Coordinator, alleging Sexual Harassment against a Respondent, and requesting that the District investigate the allegation(s) of Sexual Harassment.

“Respondent” is an individual who is reported to be the individual accused of conduct that could constitute Sexual Harassment.

“Sexual Harassment” is conduct on the basis of sex (including, without limitation, gender, sexual orientation, and/or gender identity), occurring in a school system education program or activity that satisfies one or more of the following:

1. A 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 sex-based 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, dating violence, domestic violence, or stalking as defined in state or federal law.

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

For purposes of this Policy, conduct that satisfies this definition is not sexual harassment if the conduct occurred: (1) outside the United States or (2) under circumstances in which the school system did not have substantial control over both the Respondent and the context in which the Sexual Harassment occurred.

“Supportive Measures” are free, non-disciplinary, non-punitive, individualized services and shall be offered to the Complainant, and may be offered to the Respondent, as appropriate. These measures may include, but are not limited to: counseling, course modifications, and schedule changes. These measures shall be designed to restore or preserve equal access to the District’s education programs and activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District’s educational environment and/or deter Sexual Harassment. Supportive measures shall remain confidential.

IV. Reporting

All students, employees and community members have a responsibility to maintain a positive learning, work, and school environment by reporting all incidents or suspected incidents of Sexual Harassment involving themselves or others. The District has adopted procedures which provide for the prompt and equitable resolution of matters protected under this Title IX Sexual Harassment Policy.

Reports of Sexual harassment may be made at any time. The report may be made to the Title IX Coordinator in person, by mail, by telephone, or e-mail. The District strongly encourages reports of Sexual Harassment be made to the Title IX Coordinator; however, a report may be made to any District employee. Any District employee who receives information of conduct which may constitute Sexual Harassment under this Policy must immediately inform the Title IX Coordinator. Failure to report allegations of Sexual Harassment may result in disciplinary action.

In the event the Title IX Coordinator is the alleged Respondent, the report of Sexual Harassment must be made directly to the Superintendent.

While the District will respond to all reports of Sexual Harassment (formal or informal), the Title IX Grievance Process is initiated only by filing of a Formal Complaint (Form A) with the Title IX Coordinator.

V. Title IX Coordinator

**Darla Peterson
Principal
214 West 7th Street
Oelrichs, SD 57763-0065
(605) 535-2631
(605) 535-5321**

VI. Retaliation

The District prohibits retaliation against any person because that person has made a report or Formal Complaint of Sexual Harassment, has assisted another person making a report or Formal Complaint, has filed a formal or informal complaint with any state or federal agency, or because that person has testified or participated in any manner in an investigation, proceeding, or hearing concerning a complaint of discrimination or harassment. Retaliation is a violation of federal and state law, and may lead to disciplinary action.

Retaliation based on complaints which are false, malicious, or frivolous are not protected under this policy.

VII. Training and Policy Dissemination.

All District employees will receive training on this policy. The Title IX Coordinator, investigators, Decision Maker(s), and any person who facilitates an informal resolution process will receive advanced training. A copy of Title IX training will be available on the District website.

This Policy and Procedure will be provided to applicants for employment, students, parents/legal guardians, employees, and unions/work groups. This Policy and Procedure will be posted on the District website.

VIII. Confidentiality.

The District will respect the confidentiality of the Complainant and the Respondent as much as possible, however, some information may need to be disclosed to appropriate individuals or authorities. All disclosures shall be consistent with the District's legal obligations and the necessity to investigate allegations of Sexual Harassment and take appropriate action.

Adopted: 3/8/2021

Legal References: _____

Title IX Sexual Harassment Grievance Procedure

I. Report of Sexual Harassment

All students, parents/guardians, employees, and community members have an obligation to report all incidents or suspected incidents of sexual harassment involving themselves or others. Reports of sexual harassment may be made at any time. The report may be made to the Title IX Coordinator in person, by mail, by telephone, or e-mail.

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The District strongly encourages reports of Sexual Harassment be made to the Title IX Coordinator; however, a report may be made to any District employee. Any District employee who receives information of conduct which may constitute Sexual Harassment or learns of allegations of Sexual Harassment, must immediately inform the Title IX Coordinator. This reporting in no way limits an employee's responsibility as a mandatory reporter. In the event the Title IX Coordinator is the alleged Respondent, the report of Sexual Harassment must be made directly to the Superintendent. Failure to report allegations of Sexual Harassment may result in disciplinary action.

When the Title IX Coordinator learns of alleged Sexual Harassment, the Title IX Coordinator will:

1. Contact Complainant and offer Supportive Measures (See below);
2. Provide the Complainant with this Policy and Procedure;
3. Detail that the Complainant can file a Formal Complaint to initiate the investigation which will result in a Determination of Responsibility; and
4. In the event of an emergency, the Title IX Coordinator will call 911.

Supportive Measures, include, but are not limited to: counseling, course modifications, and schedule changes.

II. Formal Complaint

A student, parent/guardian, employee, or third party who believes that Sexual Harassment, as defined in this Policy, has occurred, may file a Formal Complaint of Sexual Harassment. (ATTACHED – Form A). Under certain circumstances, the Title IX Coordinator may sign a Formal Complaint of Sexual Harassment. In a case where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinator will not act as a Complainant or otherwise as a party for purposes of the investigation and grievance procedure.

A Formal Complaint of Sexual Harassment will be dismissed, without conducting an investigation, if:

1. The conduct did not occur against a person in the United States; and/or
2. At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the District; and/or
3. The conduct did not occur in the District's education program or activity; and/or
4. The conduct alleged in the Formal Complaint would not constitute sexual harassment as defined in this Policy.

A Formal Complaint of Sexual Harassment may be dismissed, without conducting an investigation, if:

1. At any time during the investigation or hearing, a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
2. The Respondent is no longer enrolled or employed by the District; or
3. Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.

In the event of a dismissal, both parties will receive notification of the same with the opportunity to appeal the dismissal to the Decision Maker. Where allegations do not meet the definition of Title IX Sexual Harassment or when an incident did not occur within the institution's program or activity, the District must dismiss the allegations for Title IX purposes, but it may still address allegations in any manner the District deems appropriate under its policies.

III. Notice of Formal Complaint

Upon receipt of a Formal Complaint, the Title IX Coordinator will provide the following information to both the Complainant (and the Complainant's parent/guardian, if applicable) and the Respondent (and the Respondent's parent/guardian, if applicable):

1. A copy of the District's Sexual Harassment Policy and this Procedure;
2. The allegations of Sexual Harassment, including the identities of the persons involved, the conduct allegedly constituting Sexual Harassment, and the date/location of the incident;
3. A statement that the Respondent is presumed not to be responsible for the alleged conduct and that a Determination of Responsibility will be made at the conclusion of the grievance process;
4. A statement that both parties are prohibited from knowingly making false statements or submitting false information during the grievance process;
5. Each party may have an advisor of their choice, who may be, but is not required to be, a lawyer; and
6. Each party is entitled to inspect and review evidence the Title IX Coordinator compiles during the investigation.

IV. Investigation

The Title IX Coordinator, or its designee, will initiate and complete an investigation.

1. **Initial Investigation.** The Title IX Coordinator (or designee) will complete an initial investigation. The Title IX Coordinator (or designee), will evaluate all relevant evidence,

provide an equal opportunity for parties to present witnesses and evidence, not restrict the ability of either party from discussing allegations under investigation, allow parties to be accompanied by an advisor of their choice, and provide notice of meetings so as to allow sufficient time for parties to prepare for such meetings. No information protected by privilege will be used during the investigation, unless the District obtains a party's voluntary, written consent to do so.

2. **Inspect and Review Evidence.** After completing the Initial Investigation, the Title IX Coordinator (or designee) must provide each party with an equal opportunity to inspect and review any evidence obtained during the investigation that is directly related to the allegations raised in the Formal Complaint. Each party will have 10 days to submit a written response, which the Title IX Coordinator (or designee) will consider prior to completing the Investigative Report.
3. **Investigative Report.** After the 10 days have lapsed, the Title IX Coordinator (or designee) will prepare a written Investigative Report that summarizes the relevant evidence obtained – including details regarding the credibility of witnesses, discrepancies, inculpatory and exculpatory information, recommendations, and reference to applicable District policies. The investigative report will include a description of the procedural steps taken, including notices that were provided to the parties. The Title IX Coordinator (or designee) shall provide a copy of the Investigative Report to the parties (and advisors).
4. **Written Response.** Each party will have 10 days from receipt to provide a written response before the Investigative Report, and written responses, will be submitted to the Decision Maker for a Determination of Responsibility.

V. Determination of Responsibility

Prior to making a Determination of Responsibility, the Decision Maker will allow each party 5 days to submit written, relevant questions that the party wants asked of any party or witness. The Decision Maker may exclude irrelevant questions. If excluded, the Decision Maker will provide an explanation for excluding the question(s). Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. The parties or witnesses will get 5 days to answer the questions proposed.

The Decision Maker will issue a written Determination of Responsibility within 10 days of receipt of the answered questions. If no questions are presented, or no answers are received within the appropriate time frame, the Decision Maker will complete the Determination of Responsibility. The Decision Maker will apply the preponderance of the evidence standard in evaluating whether or not a violation has occurred. The Determination of Responsibility will include:

1. Identification of the allegations potentially constituting sexual harassment;
2. Description of the procedure steps taken;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of Board policies, ethical standards, or other regulations;
5. A statement and rationale for the result as to each allegation;

6. If applicable, any disciplinary sanctions or remedies; and
7. Right to appeal.

VI. Appeal

Either party may appeal the decision of the Decision Maker. An appeal is taken by filing the Appeal Form (ATTACHED – Form B) with the Title IX Coordinator within 10 days of the Decision Maker's Determination of Responsibility. The appeal must be based on one of the following:

1. 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.

Appeals for any other reason will not be heard.

VII. Informal Resolution

If both parties agree, and provide written, voluntary consent, informal resolution of Formal Complaints may be utilized. At any time before an informal resolution is reached, a party may withdraw from the informal process and resume the formal grievance process. During the pendency of the informal resolution process, the investigation and grievance processes that would otherwise occur are stayed and all related deadlines are suspended.

Informal resolution is not available regarding allegations of Sexual Harassment between a student and employee of the District.

Adopted: ____/____/2021

Legal References: _____

Darla Peterson
Principal
214 West 7th Street
Oelrichs, SD 57763-0065
(605) 535-2631
(605) 535-5321

*Fill in applicable section below.

What educational program or activity did the sexual harassment occur in?

Name of Person filling out this form (Please Print): _____

By signing below, I am requesting that this matter be investigated under the provisions of Title IX of the Education Amendments of 1972.

Signature: _____ Date: _____

Address: _____
Street Address City State Zip

Phone: _____
Home Cell

This Formal Complaint was received by the Title IX Coordinator on _____
(Date)

Signature of Title IX Coordinator: _____

Title IX Sexual Harassment - Appeal Form

This Appeal Form must be submitted to the Title IX Coordinator (and provided to the Decision-Maker):

Darla Peterson
Principal
214 West 7th Street
Oelrichs, SD 57763-0065
(605) 535-2631
(605) 535-5321

Appellant Information

**Attach Determination of Responsibility.*

Name: _____
Last Name
First Name
Middle Initial

I was the (select one): ☐ Complainant ☐ Respondent

in the underlying Formal Complaint. A *Determination of Responsibility or Dismissal* was sent on
 _____ by _____
Date
Name of Decision-Maker

Appeal Information

I have reviewed the *Determination of Responsibility or Dismissal* and District Policy and Procedure (_____), and I desire that the *Determination of Responsibility or Dismissal* be reviewed by the Superintendent of School because (select one):

☐ There was a procedural irregularity that affected the outcome of the matter; namely:

☐ There is new evidence that was not reasonably available at the time the *Determination of Responsibility or Dismissal* was made that could affect the outcome of the matter. I have attached the new evidence to this form and/or summarized the new evidence here:

-
-
-
-
-
-

Appeals for any other reason will not be heard.

Signature: _____ Date: _____

Phone: _____

Home Cell

This Appeal Form was received by the Title IX Coordinator on _____
Date

Signature of Title IX Coordinator: _____

Designation of Responsibility under Title IX Sexual Harassment Policy

The Board of Education of the Oelrichs School District hereby designates the following individuals to serve in the following positions:

Title IX Coordinator	Darla Peterson
Decision Maker	Valerie Sword
Appeal	Dr. Mitchell Stone

[Form Letter – Initial Letter to Complainant]

[Insert Date]

Dear _____,

(If it is a student, this letter must be sent to the student and parent/guardian)

On _____, I learned that you have concerns about yourself or others being subjected to Sexual Harassment as defined in District Policy _____. [IF you contacted the person *via* phone or email, detail that here, too. Include the content of the conversation and the date of the conversation.]

As the Title IX Coordinator, it is my responsibility to contact you to discuss this matter. The District takes allegations of Sexual Harassment very seriously. Our District Policy and corresponding Procedure provide for an opportunity for you (and others) to make a Formal Complaint of Sexual Harassment. I have attached a copy of the Policy and Procedure, along with the Formal Complaint Form here. Please read and review these documents carefully. If you would like to move forward with a Formal Complaint, I will initiate an investigation into this matter. In the event you decide not to file a Formal Complaint, or the Formal Complaint is dismissed, the allegations may be evaluated under other District policies. I would be happy to answer any questions you have and assist you in this matter.

As described in the Policy [as we discussed in our phone conversation/ in-person meeting], Supportive Measures are available to you, which include: _____ [Detail here]. These measures are designed to restore and/or preserve equal access to the District's education programs and activities. [If the allegations require contacting 911, detail that you are doing that here. If the allegations warrant making a mandatory report, detail that here.]

[If you have scheduled a meeting to meet with the person, detail that here.]

If you have any questions, please let me know.

Sincerely,

Name
Title

Email
Address
Phone

[Form Letter – Notice of Formal Complaint – Complainant]

[Insert Date]

Dear _____,

(If it is a student, this letter must be sent to the student and parent/guardian)

This letter is to inform you that I have received your Formal Complaint alleging that you have been subjected to sexual harassment, as defined under Title IX of the Education Amendments of 1972.

The Respondent is presumed not responsible for the alleged conduct contained in the Formal Complaint. A Determination of Responsibility will not be made until the conclusion of the process described in Policy _____ and Procedure _____. A copy of the applicable Policy and Procedure are attached hereto. Please review them. If you have questions about the process, please direct your questions to me.

During the course of this process, you are prohibited from knowingly making any false statements or submitting false information. In the event of such occurrence, disciplinary actions may be taken against you. If new allegations arise in the course of the investigation, I will provide you notice of the new allegations.

You may have an advisor of your choice (who may be an attorney) represent you in these matters, at your own cost. I will begin my investigation into the allegations contained in the Formal Complaint. [OR: I have assigned the investigation of these allegations to _____.] You will have an opportunity to tell your side of the story during an interview. I will provide you advance notice of the interview so that you can elect to bring your advisor with you and adequately prepare.

Once the investigation is complete, you may inspect and review evidence compiled directly relating to the allegations contained in the Formal Complaint. You will then have an opportunity to submit a written response. After 10 days have lapsed, I will prepare a written Investigative Report. You will receive a copy of the Investigative Report. You will have 10 days from receipt of the Investigative Report to provide a written response. I will then submit my Investigative Report to the Decision Maker. In this case, the Decision Maker will be _____. Upon agreement of the parties, these timelines may be shortened to more expeditiously resolve the matter.

Prior to making a determination, the Decision Maker will allow both parties to submit written, relevant questions that the party wants asked of any party or witness. Irrelevant

questions will be excluded. Parties and witnesses will get 5 days to answer the questions. Then, the Decision Maker will issue a written determination.

If both Parties agree, and provide written, voluntary consent, informal resolution of complaints may be used to resolve complaints. At any time before an informal resolution is reached, a party may withdraw from the informal process and resume the formal process. However, if an informal, final resolution is reached, it is final and will be binding on the parties. The informal resolution process is not available where the Complainant is a student and the Respondent is an employee of the District.

As appropriate, I will work with you in discussing supportive measures that will be available to you. Some options that are available to you include (but are not limited to):

[List here]

If you have any questions, please let me know.

Sincerely,

Name

Email

Address

Phone

[Form Letter – Notice of Formal Complaint – Respondent]

[Insert Date]

Dear _____,

(If it is a student, this letter must be sent to the student and parent/guardian)

This letter is to inform you that _____ has filed a Formal Complaint against you, alleging that you have engaged in sexual harassment, as defined under Title IX of the Education Amendments of 1972. A copy of the Formal Complaint is attached to this letter.

You are presumed not responsible for the alleged conduct contained in the Formal Complaint. A Determination of Responsibility will not be made until the conclusion of the process described in Policy _____ and Procedure _____. A copy of the applicable Policy and Procedure are attached hereto. Please review them. If you have questions about the process, please direct your questions to me.

You may have an advisor of your choice (who may be an attorney) represent you in these matters, at your own cost. I will begin my investigation into the allegations contained in the Formal Complaint. [OR: I have assigned the investigation of these allegations to _____.] You will have an opportunity to tell your side of the story during an interview. I will provide you advance notice of the interview so that you can elect to bring your advisor with you and adequately prepare.

Once the investigation is complete, you may inspect and review evidence compiled directly relating to the allegations contained in the Formal Complaint. You will have 10 days to submit a written response. After 10 days have lapsed, I will prepare a written Investigative Report. You will receive a copy of the Investigative Report. You will have 10 days from receipt of the Investigative Report to provide a written response. I will then submit my Investigative Report to the Decision Maker. In this case, the Decision Maker will be _____. Upon agreement of the parties, these timelines may be shortened to more expeditiously resolve the matter.

Prior to making a determination, the Decision Maker will allow both parties to submit written, relevant questions that the party wants asked of any party or witness. Irrelevant questions will be excluded. Parties and witnesses will get 5 days to answer the questions. Then, the Decision Maker will issue a written determination.

If both Parties agree, and provide written, voluntary consent, informal resolution of complaints may be used to resolve complaints. At any time before an informal resolution is reached, a party may withdraw from the informal process and resume the formal process.

However, if an informal, final resolution is reached, it is final and will be binding on the parties. The informal resolution process is not available where the Complainant is a student and the Respondent is an employee of the District.

During the course of this process, you are prohibited from knowingly making any false statements or submitting false information. In the event of such occurrence, disciplinary actions may be taken against you.

As appropriate, I will work with you in discussing supportive measures that will be available to you. [If necessary – place employee on leave. List Supportive Measures here.]

Sincerely,

Name

Title

Email

Address

Phone

[Form Letter – Notice of Interview]

[Insert Date]

Dear _____,

This letter is to inform you that an interview has been scheduled for _____
[date/time/location] regarding the allegations contained in the Formal Complaint that I
previously provided to you. The following people will be in attendance at this interview:

_____.

You may have an advisor of your choice (who may be an attorney) represent you in these
matters, at your own cost.

If you have any questions or concerns, please contact me.

Sincerely,

Name

Email

Address

Phone

[Form Letter – Letter from Decision Maker re: Questions – to both Complainant and Respondent]

[Insert Date]

Dear _____,

This letter is to inform you that I have received the Investigative Report from the Title IX Coordinator (Investigator). You have ten days from the date of this letter to submit written, relevant questions to be answered by a party or witness.

Please note, if any of the questions you submit are not relevant, I may exclude them. I will provide you an explanation for the exclusion. I will provide the questions to the party/witness, with copies going to each party and provide ten days for a response. If no response is received, I will prepare the Initial Determination of Responsibility.

As detailed in the Title IX Policy and Procedure, the standard to be used in determining whether a violation has occurred and/or that the Respondent is responsible is the preponderance of the evidence standard.

If you have any questions about this process, please let me know.

Sincerely,

Name
Address

Phone
Email

[Form Letter – Letter from Decision Maker – Final Determination]

[Insert Date]

Dear _____,

As you know, on _____ [Date], _____ [Complainant] filed a Formal Complaint of sexual harassment against _____ [Respondent] in violation of District Policy _____ [Insert Policy Name].

On _____ [Date], _____ [Investigator] completed his/her investigation. The Investigative Report is attached here. I have thoroughly reviewed the Investigative Report, including your response to the same. Thereafter, I provided you an opportunity to submit questions to other parties or witnesses. [Detail whether or not you excluded certain questions and why. Detail whether either party provided questions. Detail whether or not you received responses. Attach questions and answers.]

As described in District Policy _____, it is my obligation to consider the evidence compiled in the investigation and received through the exchange of questions presented to the parties and witnesses. In weighing the evidence, I must determine whether there is a greater than 50% chance that the Respondent committed sexual harassment.

[Detail the allegations of the sexual harassment.]

[Detail the procedural steps taken and the notices that were provided.]

[Detail your findings – why you believe there was or was not a violation. Rely on evidence contained in the investigative report and the questions that were exchanged. Explain your finding on each allegation and the rationale for that finding.]

[Detail if any other policies or code of ethics may have been violated.]

[Detail, if applicable, any disciplinary actions or sanctions.]

Pursuant to District Policy _____, either party may appeal this decision. An appeal is taken by filing the Appeal Form with the Title IX Coordinator within 10 days of this Determination of Responsibility. The appeal must be based on one of the following:

1. 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.

Appeals for any other reason will not be heard.

Sincerely,

Decision Maker

Address

Phone

Email