

## **Title IX** **C-131-A**



### **Key Takeaways:**

- The United States Department of Education, Office for Civil Rights promulgated new regulations regarding claims of sexual harassment, which are effective August 14, 2020.
- The District does not discriminate on the basis of sex in the education program or activity that it operates and is required by Title IX not to discriminate in such a manner. The requirement not to discriminate in the education program or activity extends to admissions and employment. Inquiries about the application of Title IX to the District may be referred to the Title IX Coordinator or Assistant Secretary for Civil Rights of the Department of Education, or both.
- Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.
- The District designates the following individual to serve as the District's Title IX Coordinator:

Name:	Eric Hon
Address:	2309 Aull Lane, Lexington, MO 64067
Email Address:	<a href="mailto:ehon@lexington.k12.mo.us">ehon@lexington.k12.mo.us</a>
Phone #:	(660) 259-4391

- This grievance procedure will be adopted and published by the District.
- All employees, students, and visitors who have witnessed, heard about, or received a report about any incident or behavior that could constitute sexual harassment under this policy must immediately report such incident or behavior to the District's Title IX Coordinator for investigation. If the allegations are against the District's Title IX Coordinator, it must be immediately reported to the Superintendent, unless the Superintendent is also the Title IX Coordinator, then to the President of the Board of Education.

- Once the District has *actual knowledge* of sexual harassment or allegations of sexual harassment, it must respond promptly in a manner that is not deliberately indifferent.

- **Definitions:**

*Actual knowledge* - Notice of sexual harassment or allegations of sexual harassment to any employee of the District. The District has actual knowledge when an employee witnesses the conduct, hears about the conduct, or receives a written report about the conduct from anyone.

*Complainant* – An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

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

*Sexual Harassment* - Conduct on the basis of sex that satisfies one or more of the following:

- An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct;
- 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 District's education, program or activity; or
- "*Sexual assault*" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "*dating violence*" as defined in 34 U.S.C. 12291(a)(10), "*domestic violence*" as defined in 34 U.S.C. 12291(a)(8), or "*stalking*" as defined in 34 U.S.C. 12291(a)(30).

*Sexual assault* – An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

*Sex offenses* - Any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent, and unlawful sexual intercourse. This includes rape, sodomy, sexual assault with an object, fondling, incest, statutory rape, and failure to register as a sex offender.

*Dating violence* - Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship.
- The type of relationship.
- The frequency of interaction between the persons involved in the relationship.

*Domestic violence* - 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;
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of Missouri; or
- 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 Missouri.

*Stalking* – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for his or her safety or the safety of others; or
- Suffer substantial emotional distress.

*Supportive measures* - Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the District'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. If the District does not provide a Complainant with supportive measures, then the District must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. Supportive measures must remain confidential and records of such must be maintained for at least 7 years for purposes of Title IX. 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 or monitoring of certain areas of the campus

*Formal Complaint* - A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient 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 recipient with which the Formal Complaint is filed. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under § 106.8(a), and by any additional method designated by the recipient. As used in this

paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part or under § 106.45, and must comply with the requirements of this part, including § 106.45(b)(1)(iii).



### **Checklist: After the District has Actual Knowledge of Sexual Harassment**

- First, the Title IX Coordinator promptly contacts the Complainant to schedule a meeting. Before this meeting, the Title IX Coordinator must provide the Complainant with written notice of the date, time, location, participants, and purpose of the meeting, with sufficient time for the Complainant to prepare to participate. See Form D.
- During this meeting, the Title IX Coordinator and the Complainant to:
  - Discuss the availability of supportive measures;
  - Consider the Complainant’s wishes with respect to supportive measures;
  - Inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint; and
  - Explain to the Complainant the process for filing a Formal Complaint. See Form A.
- The District is required to make supportive measures available to both the Complainant(s) and Respondent(s).
- The District, a District employee, or Board Member may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any rights or privileges secured by Title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under Title IX.
  - Imitation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation. Complaints alleging retaliation may be filed with the Title IX Coordinator.



### **Checklist: Removal of Respondent**

- The requirement of supportive measures does not preclude the District from removing a Respondent from the education program or activity on an emergency basis, provided that the District:
  - Undertakes an individualized safety and risk analysis;

- Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and
  - Provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.
- The requirement of supportive measures does not preclude the District from placing an employee on administrative leave during the pendency of a grievance process.



### **Checklist: Formal Complaints of Sexual Harassment**

- If the Complainant does not file a Formal Complaint, proceed under the District's process for investigating complaints of Discrimination/Harassment.
- If the Complainant does not file a Formal Complaint, Title IX allows for the District's Title IX Coordinator to file a Formal Complaint. This may be an advisable approach when dismissal of the complaint raises concerns regarding deliberate indifference or similar concerns.
- If the Complainant does file a Formal Complaint, proceed as follows:
- First, identify the required roles and individuals who fill those roles (multiple individuals are needed to fill the various roles in this process):
  - The Title IX Coordinator can be the Investigator.
  - The Decision-Maker must be someone other than the Title IX Coordinator or the Investigator.
  - The Appeal Decision-Maker cannot be the same person as the Decision-Maker who reached the determination regarding responsibility or dismissal, the Investigator, or the Title IX Coordinator.
- There are specific training requirements for individuals in the roles listed above and the training must be posted on the District's website, so the District should train individuals who may be available to serve in these roles ahead of time. Training material must be maintained for at least 7 years for purposes of Title IX.
  - Title IX Coordinators, Investigators, and Decision-Makers must receive training on:
    - The definition of sexual harassment;
    - The scope of the District's education program or activity;
    - How to conduct an investigation and grievance process;
    - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
  - Decision-Makers must also receive training on:
    - Issues of relevance of questions and evidence, including when questions and evidence, including when questions and evidence of the Complainant's sexual predisposition or prior sexual behavior are not relevant.

- Investigators must also receive training on:
  - Issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- The District must keep confidential the identity of any individual who has made a report or complaint of sexual harassment, including: any individual who has made a report or filed a Formal Complaint of sexual harassment; a Complainant; an individual who has been reported to be the perpetrator of sexual harassment; a Respondent; and any witness, except as permitted by:
  - Family Educational Rights Privacy Act (FERPA);
  - As required by law; or
  - To carry out the purposes of Title IX, including conducting any investigation, hearing, or judicial proceeding arising thereunder.
- Second, develop a timeline: The District generally has **15 calendar days** to complete the investigation and **45 calendar days** after sending the notice of Formal Complaint to the parties to make a determination regarding responsibility.
- A temporary delay to this process or a limited extension of time frames for good cause is allowed. The District is required to provide written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action. Good cause may include:
  - 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.
- Third, provide written notice: Upon receipt of a Formal Complaint, the District must provide written notice of allegations to the parties who are known. See Form B.
  - If the District decides to investigate allegations about the Complainant or Respondent that are not included in this initial notice, the District must provide notice of the additional allegations to the parties whose identities are known.
  - The District may consolidate Formal Complaints as to the allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against another party, where allegations of sexual harassment arise out of the same facts or circumstances.
- Fourth, determine if an investigation will take place or if the District should dismiss the Formal Complaint.
- If the conduct alleged in the Formal Complaint:
  - Would not constitute sexual harassment, even if proved;
  - Did not occur in the District's education program or activity; or

- Did not occur against a person in the United States; then the District must dismiss the Formal Complaint with regard to that conduct for purposes of sexual harassment under Title IX.
- If, at any time, the Complainant notifies the District in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein, if the Respondent is no longer employed by the District, or if specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the Formal Complaint or the allegations therein, the District may dismiss the Formal Complaint or any allegations therein.
- Such dismissal does not preclude action under another provision of the District's code of conduct.
- If a Formal Complaint is dismissed, the District will promptly send written notice of the dismissal and the reason(s) therefor simultaneously to the parties. Either party may appeal within **5 calendar days** of the dated dismissal letter. See Form C.
- If a Formal Complaint is dismissed, proceed under the District's process for investigating complaints of Discrimination/Harassment.



### **Checklist: Investigating Formal Complaints**

- If investigating, the following requirements apply to the investigation and decision-making process generally:
  - Equal Treatment of the Parties
    - A presumption is made that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
    - The District may not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
    - The Title IX Coordinator, Investigator, or Decision-maker, cannot have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.
    - Provide equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

- Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meetings or proceeding by the advisor of their choice and do not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting or grievance proceeding.
  - However, the District may establish restrictions regarding the extent to which the advisor may participate in the proceedings if the restrictions apply equally to both parties.
- Treat Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility for sexual harassment has been made against a Respondent and following this process before the imposition of disciplinary sanctions or other actions not supportive measures against a Respondent.
  - Remedies must be designed to restore or preserve equal access to the District's education program or activity. Such remedies may include supportive measures.
    - However, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.
- Evidence
  - The standard of evidence used to determine responsibility is the preponderance of the evidence standard. (i.e. it is more likely than not that the sexual harassment occurred). This standard is met if there is greater than a fifty percent chance that sexual harassment occurred, based on the facts.
  - The burden of proof is on the District and the burden of gathering evidence sufficient to reach a determination rests on the District, not the parties.
  - The District 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, unless the person holding such privilege has waived the privilege.
  - Credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.
  - There must be an objective evaluation of the evidence, including both inculpatory and exculpatory evidence.



- Sanctions and Remedies
    - The range of possible disciplinary sanctions and remedies following any determination of responsibility include all disciplinary actions and remedies available to the District under policy, procedure, or law, up to and including expulsion for students or termination for employees. The range of remedies includes, but is not limited to, modification of schedules, restrictions on contact, access restrictions to portions of campus, or other similar course of actions.
  - Records
    - All records regarding the investigation and determinations regarding responsibility must be maintained for at least 7 years for purposes of Title IX.
- If investigating, the following steps must be followed:
- If any party's participation is invited or expected during this investigation, the District will provide written notice **5 calendar days** before the date of participation. See Form D.
  - Interview the Complainant and ask them to provide relevant evidence and documentation for review. This could include requesting a release for medical records, if applicable.
  - Determine who needs to be interviewed (Respondent(s), witnesses, etc.) and develop questions, including asking them to provide relevant evidence and documentation.
  - Interview witnesses, Respondent(s), and the Complainant again (if necessary). Gather written and signed statements from each person interviewed.
  - Prior to the completion of the investigative report, the Investigator will send to each party and their advisors, if any, the evidence subject to inspection and review.
  - The parties will have **10 calendar days** from the date of the letter to submit a written response, which the Investigator will consider prior to the completion of the report. See Form E.
  - After the completion of the investigative report, the Investigator will send to each party and their advisors, if any, the investigative report. The investigative report must be sent at least 10 calendar days prior to the determination regarding responsibility. See Form F.

- The parties will have **5 calendar days** from the date of the letter providing the investigative report to submit to the Decision-Maker a written response.
- The parties will have **5 calendar days** from the date of the letter to submit to the Decision-Maker written, relevant questions that a party wants asked of any party or witness.
  - If it is determined that questions are not relevant, within **5 calendar days** of receipt of the written questions, the Decision-Maker must explain to the party proposing the questions any decision to exclude a question as not relevant.
    - 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 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 Decision-Maker will promptly distribute the questions to the appropriate party(ies) and/or witness(es) and require the answers be returned within **3 calendar days**. The Decision-Maker will promptly distribute the answers to each party.
- Each party will be given **2 calendar days** from the date of the letter wherein the answers are provided to submit limited follow-up questions.
  - The Decision-Maker will promptly distribute the questions to the appropriate party(ies) or witness(es) and require the answers be returned within **2 calendar days**. The Decision-Maker will promptly distribute the answers to each party.
- The Decision-Maker will issue a written determination regarding responsibility **within 45 calendar days** of the dated letter for the most recent notice of Formal Complaint to the parties. Either party may appeal within **5 calendar days** of the dated determination letter. See Form G.
  - If an appeal is not filed, the determination regarding responsibility becomes final on the date which an appeal would no longer be considered timely.
  - If an appeal is filed, the determination regarding responsibility becomes final on the date the determination of the result of the appeal was provided to the parties.



### **Checklist: Appeal**

- The District will notify both parties in writing, as soon as possible, when an appeal is filed. See Form H.
- The Appeal Decision-Maker cannot be the same person as the Decision-Maker that reached the determination regarding responsibility or dismissal, the Investigator, or the Title IX Coordinator.
- Both parties will be given a reasonable equal opportunity to submit a written statement in support of, or challenging, the outcome. The written statement must be submitted to the Appeal Decision-Maker within **5 calendar days** of the dated letter for the appeal notification.
- The Appeal Decision-Maker will issue a final written decision describing the result of the appeal and the rationale for the result and provide it to the parties within **15 calendar days** of the dated letter for the appeal notification. See Form I.



### **EGS Reference:**

- District Policies, C-131-P
- Employee Manual, C-131-E
- Student/Parent Handbook, C-131-S



### **Forms:**

- C-131-A Form A (Complaint Form)  
Form B (Notice of Allegations)  
Form C (Complaint Dismissal)  
Form D (Notice of Interview/Meeting)  
Form E (Evidence and Opportunity to Respond Prior to Investigation)  
Form F (Evidence and Opportunity to Respond After Investigation)  
Form G (Determination Regarding Responsibility)  
Form H (Notice of Appeal)  
Form I (Appeal Decision)

Adoption Date(s): October 21, 2020