

SEXUAL HARASSMENT POLICY

The Wall School District believes that we all play an important role in making our school district a safe place to learn. It is the district's policy that sexual harassment is illegal, unacceptable and shall not be tolerated; that no employee or student of the school district or visitor on the school premises may sexually harass another. Any employee, student or visitor will be subject to disciplinary action including possible termination for violation of this policy.

DEFINITION

Sexual Harassment is conduct on the basis of sex that meets in one or more of the following:

- a. A school employee conditioning an educational benefit or service on and individual's participation in unwelcome sexual conduct (also referred to as "Quid Pro Quo")
- b. Any type of unwelcome conduct determined by a reasonable person, to be severe, pervasive, and objectively offensive that it effectively denies a person's equal access to the recipient's education program or activity.
- c. "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)

All persons within the district might be a victim (also referred to as "complainant") or perpetrator (also referred to as "respondent") of sexual harassment.

Sexual Harassment might consist of verbal, physical, or other types of conduct that targets a person based on his/her sex that the person finds unwelcome.

RESPONSIBILITY

School district officers, employees and students are responsible for maintaining a working and learning environment free from sexual harassment in a school's education program and/or activity. The district will respond to allegations of sexual harassment once it has actual knowledge that a person may have been a victim of sexual harassment.

COMPLAINTS

Because the district will not take action unless a staff member has been made aware of sexual harassment, it is important that anyone who believes he/she has been sexually harassed immediately contact a school employee via mail, phone, electronically, or in person. Staff members who have been informed of a possible incident of sexual harassment must report the information to the district's Title IX Coordinator.

REPORTING SEXUAL HARASSMENT

Students who believe they have been sexually harassed or parents/guardians who believe their child has been sexually harassed must notify the district's Title IX Coordinator or any school employee regardless of that employee's job description

Employees who believe they have been sexually harassed must notify the supervisor of the accused.

Once the Title IX Coordinator has been made aware of an alleged incident (whether or not a complaint has been filed), he/she will provide the victim and/or the accused:

- a. Available supportive measures that are:
 - a. Free, individualized services designed to restore or preserve equal access to education, protect safety, or deter sexual harassment
 - b. Supportive measures that are not punitive or disciplinary with respect to another student
 - c. Do not place unreasonable burdens on any other person
- b. The right to file a formal complaint that initiates an investigation; and
- c. Instructions on how to file a formal complaint

Any employee or student who believes he or she has been a subject of sexual harassment by a district employee, officer, student or visitor should report this incident immediately to his or her immediate supervisor or person of influence. If the immediate supervisor is involved in the activity, the violation should be reported to the supervisor's immediate supervisor.

An anonymous report may be submitted on line (<https://wall.k12.sd.us/Comment-Concerns.html>), or by sending a letter to the school counselor. An anonymous report may or may not initiate an investigation or a formal complaint to the Title IX Coordinator.

All formal complaints will be thoroughly investigated (regardless of the sex of those involved). In the event the victim and victim's parent/guardian chooses not to file a complaint, the district reserves the right to file a complaint on its own.

The Wall School District believes that we all play an important role in making our school district a safe place to learn. All Wall School District employees and officials will keep all personal information connected to any and all reports of Title IX violations and related proceedings strictly confidential unless they believe there is an immediate threat or there is an allegation of abuse to a person under the age of 18 or vulnerable adult.

If an employee or student/student's guardian files a written complaint because of dissatisfaction with the handling of the complaint, he or she may utilize the applicable grievance procedure (Student Grievance outlined in the MS/HS student handbook, FILE: KL in the Wall School District Policies).

INVESTIGATION PROCESS

During the Process:

1. Complainants and Respondents will be treated equitably
2. All relevant evidence will be evaluated objectively
3. All district individuals involved with the process will be trained and will not have any bias or conflict of interest
4. Because all findings must be based on the evidence presented, the respondent will be presumed not responsible for the actions in which he/she is accused
5. The resolution of formal complaints will be prompt

6. A list of the possible remedies and/or disciplinary sanctions will be made available
7. The standard of evidence used by the school will be stated outlining how the student will determine responsibility for all sexual harassment proceedings (preponderance of evidence or clear and convincing evidence)
8. Written policies will state indicate the right to appeal the result of the grievance.
9. The school will describe the range of supportive measures to the complainants and respondents
10. No legally protected information can be used during an investigation unless it has been waived by the person holding that privilege

When an incident of sexual harassment has been reported, the concern of the Wall School District will focus on learning what happened. In order for a thorough investigation to take place it is important that all important facts be shared with the person conducting the investigation. It is important to note that the finding the facts is the district's sole purpose, so a finding and/or resolution can be reached.

1. The Wall School District will provide written information -
 - a. Written notice of the school's grievance process
 - b. Written notice if there's an opportunity for an informal resolution
 - c. The notice will include several pieces of information
 - i. Actual allegations and facts that would constitute sexual harassment
 - ii. The presumption of innocence (not responsible until after evidence has been collected and reviewed)
 - iii. A statement that the parties are entitle to adviser of their choice
 - iv. A statement that the parties can request to inspect and review certain evidence
 - v. Information regarding the code of conduct and false statements
2. Mandatory Dismissals
 - a. The Wall School District will dismiss a complaint:
 - i. That does not describe conduct that meets the definition of sexual harassment
 - ii. That alleges sexual harassment that did not occur in the school's education program or activity
 - iii. That alleges sexual harassment that did not occur in the United States at all.
 - iv. Schools can still address these complaints under their code of conduct, even if the misconduct is not sexual harassment under Title IX.
3. Discretionary Dismissals
 - a. The Wall School District may dismiss a complaint:
 - i. If the complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or some of its allegations
 - ii. If the respondent is no longer enrolled or employed by the school; or

- iii. If specific circumstances prevent the school from gathering evidence sufficient to reach the determination about the allegations
 - b. The Wall District reserves the right to proceed if it doesn't think a dismissal is appropriate
- 4. Dismissal Procedures
 - a. When the Wall School District dismisses a complaint:
 - i. It will do so promptly by sending a written notice of the dismissal and reasons to both parties
 - ii. Both parties have the right to appeal a school's dismissal decisions
- 5. Gathering Evidence: Schools and Parties
 - a. The Wall School District will:
 - i. Give both parties specific, equal rights and protections (these rights apply whether the complainant filed the formal complaint, or whether the Title IX Coordinator began the investigation by signing the formal complaint.
 - ii. Not access a party's personal records if a physician, psychiatrist, psychologist, or other professional for the purpose of treatment to the party, without consent, maintains them (unless permission is granted in writing).
 - iii. Provide an equal opportunity for the parties to have witnesses and evidence, including expert witnesses, as well as inculpatory or exculpatory evidence
 - iv. Not restrict the ability of either party to discuss the allegations under investigation, or to gather and resent relevant evidence
 - v. Provide the same opportunities to the parties to have others present during the grievance proceedings, including access to an advisor of choice for any meetings or hearings.
 - vi. Provide (when applicable) written notice of the date, time, location, participants, and purpose of all hearings, interviews, or other meetings, with sufficient time for the party to prepare (for both the complainants and respondents)
 - vii. Provide equal opportunities for the parties and their advisors to inspect and review the evidence obtained by the school as part of its investigation, if the information is directly related to the allegations raised the formal complaint (evidence can be sent in electronic and/or hard copy).
 - viii. Give the parties a meaningful opportunity to respond to the evidence after the school has provided it (even if it has evidence it does not intend to use).
- 6. Investigative Reports
 - a. After gathering evidence, the Wall School District will prepare an investigative report on the allegations of the formal complaint.

- b. The Wall School District will give the parties at least ten days to respond to the evidence in writing. If a response is submitted, the school will consider that response before finalizing the investigative report
 - c. The investigative report will be finalized and provided to the parties
 - d. That report will be circulated to the parties 10 days before any determination of responsibility, or 10 days before a hearing, if a hearing happens.
7. Hearings
 - a. The Wall School District understands it has the option, but never the obligation, to hold a hearing.
 - b. The Wall School District understands it must give the parties equal opportunity to submit relevant, written questions to each other, before the decision-maker reaches a determination
 - c. The Wall School District understands that questions and evidence about a complainant's prior sexual history are not relevant, with limited exceptions
8. Decision Making: Objective and Unbiased
 - a. The Wall School District's decision-maker will objectively evaluate the evidence and reach conclusions about whether the respondent is responsible for the alleged sexual harassment.
 - b. The Wall School District's decision-maker will use independent judgment, so the decision-maker cannot be the same person who conducted the investigation, and cannot be the school's Title IX Coordinator
 - c. The Wall School District's decision-maker be free from conflicts of interest of bias for or against the complainants or respondents, and must receive special training about how to be impartial and how to decide what evidence is relevant.
 - d. The Wall School District's decision-maker will weigh the relevant evidence and decide whether it meets the school's standard of evidence for sexual harassment allegations
9. Decision Making: Written Decisions from the Wall School District
 - a. Will include:
 - i. The portion of the school's policies that was violated (Title IX or Sexual Harassment policy)
 - ii. A description of the procedural steps that were taken by the school on the way to getting to that point (any sites reviewed, interviews taken place, etc.)
 - iii. A findings of fact section (explains the facts that were introduced)
 - iv. A section that draws conclusions after applying the facts to the portion of the school's policy that applies
 - v. A statement and rationale for the ultimate determination of responsibility
 - vi. Any disciplinary sanctions that the school will impose on the respondent, and state whether the school will provide remedies to the complainant (what will the school do to help the complainant in the event the respondent is responsible).

- vii. A statement and rationale for any remedies for the complainant, addressing how those remedies will restore or preserve equal access
- viii. A statement of the recipient's procedures, a statement that the parties have a right to appeal the initial determination regarding responsibility, and the permissible bases for appeal.

10. Decision-Making: After the Decision

- a. The Wall School District will:
 - i. Send the written determination to the parties simultaneously, along with information about how to appeal the determination
 - ii. Have the discretion to set deadlines for when an appeal must be filed, bearing in mind the obligation to conclude the entire grievance process and bring resolution to the situation for both parties, within a reasonable prompt time frame
 - iii. The Title IX coordinator is responsible for carrying out the remedies contained in the written decisions

11. Appeals

- a. The Wall School District will offer both parties an opportunity to appeal
- b. Appeals can be taken from two different steps in the process:
 - i. After a dismissal before the grievance process, whether mandatory or discretionary
 - ii. At the end of the grievance process
- c. Grounds for Appeal
 - i. A procedural irregularity affected the outcome of the matter
 - ii. New evidence has been discovered that was not reasonable available at the time of the determination on responsibility or dismissal
 - iii. A conflict of interest on the part of a Title IX Coordinator, and investigator who compiled evidence, or a decision-maker, and the conflict of interest affected the outcome.
 - iv. Schools can offer additional grounds for appeals, if they want to, so long as the grounds apply on an equal basis to the parties
- d. Appellate Processes
 - i. Recipient has to notify the parties in writing and implement appeal procedures equally
 - ii. Both parties must have equal opportunity to submit a written statement supporting or challenging the outcome
 - iii. The person who decides the appeal cannot be the same person who reached the determination regarding responsibility, or the same person as the investigator or Title IX Coordinator
 - iv. After considering the parties' written statements, the decision-maker on appeal has to issue a written decision and send it to the parties simultaneously.
 - v. The school's determination about whether the respondent is responsible for the sexual harassment allegations becomes final after appeal.

RECORD KEEPING

- a. Sexual Harassment Record will be kept for 7 years
 - i. Records of a school's investigation (including any determination of responsibility, evidence used,
 - ii. Records of any appeal and the materials associated with an appeal (such as written statements of the parties)
 - iii. Records of any informal resolution process
 - iv. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution. These materials have to be posted on a recipient's website, or made available for public inspection if the recipient doesn't have a website
 - v. Records of the supportive measures that they took in response to the report or complaint of sexual harassment
 - vi. We have to show that we provided help and investigated appropriately – have documentation

RETALIATION

- a. Federal law prohibits retaliation, threats of retaliation, suspension, or discharge against person for raising good faith concerns regarding sexual harassment. Any retaliatory conduct is subject to disciplinary action.
- b. No person is allowed to retaliate against anyone for exercising their rights under Title IX.
- c. The Wall School District will keep the identity of all involved confidential

Sexual Harassment Complaint Investigation

Name of Student/Staff Member _____ Grade _____
Name of Alleged Harasser _____ Grade _____
Date of Incident _____ Location _____
Name of Investigator _____ Investigation Date _____

Questions to Ask the Complainant:

WHO, WHAT, WHEN, WHERE, AND HOW:

1. Who committed the alleged harassment?
2. What exactly occurred or was said?
3. When did it occur and is it still ongoing?
4. Where did it occur?
5. How often did it occur?
6. How did it affect you?

RESPONSE:

1. How did you react?
2. What response did you make when the incident(s) occurred?
3. What response did you make afterwards?

AFFECT:

1. How did the harassment affect you?
 - a. Has your job been affected in any way?

 - b. Has your school work been affected in any way?

 - c. How has your normal day been affected?

WITNESSES:

1. Are there any persons who have relevant information?

2. Was anyone present when the alleged harassment occurred?

3. Did you tell anyone about it?

4. Did anyone see you immediately after episodes of alleged harassment?

HISTORY:

1. Did the person who harassed you harass anyone else? (Do you know if the person you're reporting ever harassed anyone else? If so, who?)

2. Do you know whether anyone complained about harassment by that person?

EVIDENCE OTHER THAN WITNESSES:

1. Are there any notes, texts, emails, or other written or recorded evidence?

2. Is there any additional physical evidence, or other documentation regarding the

incident(s)?

RESOLUTION:

1. How would you like to see the situation resolved?

OTHER:

2. Do you know of any other relevant information?

Prior to asking the alleged harasser these questions, provide him/her with the allegations (provide events and dates of the incident) against him/her.

Questions to Ask the Alleged Harasser:

1. What is your response to the allegations?
2. What do you remember about the incident(s)?
3. If the harasser claims that the allegations are false, ask why the complainant might lie.
4. Are there any persons who have relevant information?
5. Are there any notes, physical evidence, or other documentation regarding the incident(s)?
6. Do you know of any other relevant information?

Prior to asking a third party about an incident, provide a summary of the allegations

Questions to Ask Third Parties:

1. What did you see or hear? When did this occur? Describe the alleged harasser's behavior toward the complainant and toward others in the workplace.
2. What did the complainant tell you? When did s/he tell you this?
3. Do you know of any other relevant information?
4. Are there other persons who have relevant information?

Reported findings should include:

1. Description of the issue
2. Summary of the factual findings
3. A list of witnesses
4. Assessment of witness credibility and reasonableness (include reasons for credibility determination)
5. A list of relevant documents
6. A chronology of events
7. Any action recommendation

School needs to address:

What will we do to prevent this from happening again?

How will we address a potential hostile environment?

Will the victim need additional services?

Will the school need to make arrangements for tutoring, completing assignments?

Provide steps to be taken if victim experiences retaliation from harasser/others

Approved 12/8/2021