

Rhinebeck Central School District



Sexual Harassment Policy & Procedures

Title IX Compliance Officer

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The investigator may not serve as the decision for the same investigation

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The Law

Sexual Harassment Legal Definition

Under federal regulations, sexual harassment is defined as conduct on the basis of sex that is one or more of the following:

1. An employee conditioning the provision of an aid, benefit, or service of the school district on an individual's participation in unwelcome sexual conduct (*quid pro quo*, which is sexual harassment *per se*); and/or
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 district's education program or activity; and/or
3. Sexual assault, dating violence, domestic violence, or stalking, which is sexual harassment *per se*.¹

Further Clarification: The U.S. Department of Education's Office for Civil Rights issued a clarification "explaining that it will enforce Title IX's prohibition on discrimination on the basis of sex to include: (1) discrimination based on sexual orientation; and (2) discrimination based on gender identity. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any education program or activity offered by a recipient of federal financial assistance."²

Federal & State Laws Prohibiting Sexual Harassment

Sexual harassment laws stem from anti-discrimination laws. Anti-discrimination laws come from the three levels of law: federal, state, and local.

Examples of these laws, specifically within New York State, are below.

Federal

- Equal Educational Opportunities Act of 1974 (EEOA)
- Title VI of the Civil Rights Act of 1964
- Title IX of the Education Amendments of 1972
- Americans with Disabilities Act (ADA)
- Individuals with Educational Disabilities (IDEA)

State

- New York State Human Rights Law

¹ Rhinebeck Board of Education Policy: <https://go.boarddocs.com/ny/rhinebeck/Board.nsf/vpublic?open#>

²

<https://www.ed.gov/news/press-releases/us-department-education-confirms-title-ix-protects-students-discrimination-based-sexual-orientation-and-gender-identity>

- **Dignity for All Students Act (DASA)**

Three Bodies of Law

There are three bodies of law or regulation that govern sexual harassment and abuse in employment and schools:

1. Administrative
2. Civil
3. Criminal

Each of these bodies of law has its own set of rules and guidelines. They all include sexual harassment and abuse, and a complaint may trigger any one or more of them. The Office for Civil Rights, the agency that enforces Title IX (a civil rights law), discusses the need for administrative policies and procedures to prohibit sexual harassment and abuse and also, in its January 19, 2001, Revised Sexual Harassment Guidance (full text in Section 9), discusses the intersection of investigations by both civil and criminal authorities.

School District Liability

On June 22, 1998, the United States Supreme Court ruled in *Gebser v. Lago Vista Independent School District* that in order for a school district to be liable under Title IX for sexual harassment, an employee of the district with the authority to take action must have actual knowledge of the conduct and the school district made an official decision not to act. This in no way lessens the duty of the school district to thoroughly investigate all sexual harassment complaints and to dutifully conduct sexual harassment awareness training with all students and staff.

Under *Davis v. Monroe County Schools* (US Supreme Court, May 1999) school districts may be liable to their students for sexual harassment by other students. The following conditions must be present:

1. The school district knew the harassment was occurring;
2. The harassment was occurring in a context subject to school district's control;
3. The school district's deliberate indifference caused students to undergo harassment or made the student vulnerable to it, particularly by failing to take immediate and appropriate corrective action once it learned of the harassment.

Several districts in recent years have settled lawsuits and administrative complaints for thousands of dollars.

Who Can Be Involved?

<u>Complainant</u>		<u>Respondant</u>
Administrator	against	Employee
Administrator	against	Student
Administrator	against	Third Party*
Administrator	against	Administrator
Employee	against	Student
Employee	against	Third Party*
Employee	against	Employee
Student	against	Student
Student	against	Employee
Student	against	Third Party*
Student	against	Administrator

* In the school environment or at a school event/activity only. A third party includes, but is not limited to, a visiting speaker or a visiting athlete.

Anyone can be a respondent. Every complaint must be given the same consideration throughout the employer’s investigation process.

What Should a Complainant Do?

Tell the harasser that you dislike the activity/behavior and expect it to stop. NO MEANS NO! If you do not feel comfortable confronting the harasser, ask your teacher, teaching assistant, supervisor or building administrator to help make the harasser aware of the need to stop the unwelcome sexual behavior.

Report the incident to an administrator as soon as possible.

Sexual Harassment Policy 0110

The Board of Education requires the relationship between students, employees, officers, volunteers, business invitees and district contractor employees to be based upon mutual respect and professionalism. All adults are expected to exercise good judgment and maintain professional boundaries when interacting with students and each other, in all education programs and activities, both on and off school property.

It is the policy of this district to prohibit sexual harassment in the schools, at school activities, and at district-sponsored events. To that end, all officers, supervisory personnel, employees, and students of the district shall be given a copy of this policy and training regarding its terms, procedures, protections and penalties.

Definitions

Sexual harassment is defined as discrimination against a person on the basis of sex and is prohibited by both federal and state law.

Under federal regulations, sexual harassment is defined as conduct on the basis of sex that is one or more of the following:

1. An employee conditioning the provision of an aid, benefit, or service of the school district on an individual's participation in unwelcome sexual conduct (*quid pro quo*, which is sexual harassment *per se*); and/or
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 district's education program or activity; and/or
3. Sexual assault, dating violence, domestic violence, or stalking, which is sexual harassment *per se*.

Jurisdiction

Complaints of sexual harassment will be processed as Title IX complaints where the alleged conduct occurs in a location over which the district exercises substantial control over both the alleged harasser and the context in which the alleged harassment occurred.

Notice of Sexual Harassment

The district shall post on its website a notice of nondiscrimination which explains how reports of sexual harassment may be made by any person through mail, telephone or email to a Title IX Coordinator. The district shall be deemed to be on notice of sexual harassment when any district employee has actual knowledge of the allegations. Once the district is on notice of allegations of sexual harassment there shall be a reasonably prompt and equitable response in light of the presenting circumstances.

Procedure

Any student who believes that he/she has been subjected to sexual harassment by an officer, employee, student, business invitee, volunteer, or visitor is encouraged to address the matter with any district Title IX Coordinator* who shall promptly conduct an intake interview in order to determine whether the matter should be referred to a formal Title IX grievance process. The Title IX Coordinator will also explain the following possible options for resolution, where appropriate:

1. Registering an informal complaint verbally or in writing;
2. Registering a formal complaint verbally or in writing;
3. Engaging in an informal resolution process, such as mediation, to arrive at a resolution of the matter; and/or
4. Placing the district on notice of the objectionable conduct without seeking a resolution through the complaint process or mediation.

Only a Complainant or a legal parent/guardian acting on behalf of a minor child may file a formal complaint based upon the individual having been the alleged victim of conduct that could be found to constitute sexual harassment. In order for a complaint to be acted upon, the Complainant must be enrolled in the district and participating in or seeking to participate in the activity or program at the time the complaint is presented.

The Title IX Coordinator is authorized to proceed with any reported allegations as if they had been filed as an informal complaint or a formal complaint, at his/her discretion. The Title IX Coordinator will provide an initial review of all reports of alleged sexual harassment for a determination as to whether, if proven, the alleged conduct would constitute a Title IX violation, and may file a formal complaint on behalf of the Complainant at his/her discretion. All formal Title IX complaints shall be processed in accordance with federal regulations, which require a mandatory grievance process and permit informal resolution upon consent of the parties, except where the accused (Respondent) is an employee and the target is a student. The grievance process is set forth in the regulations issued pursuant to this policy.

The Title IX Coordinator will ensure that appropriate supportive measures (including but not limited to counseling, safety plans, no contact orders, modification of schedules) are provided and assure due process as described in the regulations. The Title IX Coordinator will also explain that the parties (Complainants and Respondents) and any third-party witnesses may not be subjected to retaliation or retribution, and that confidentiality shall be maintained throughout the process, except as necessary to assure fair and due process.

Informal Complaints

When the district has knowledge of an alleged act of sexual harassment or when a Complainant does not file a formal Title IX complaint, or files an informal complaint (not alleging a violation of Title IX) there will be a prompt review by a Title IX Coordinator, who shall issue a written report to the Superintendent of Schools, within ten (10) days. The Superintendent shall take such further action necessary to reasonably deter any

further act prohibited by this policy if corrective action is warranted. Such further action may include referring the matter to a Title IX investigator as if it had been filed as a formal complaint.

Formal Complaints

All formal complaints shall be received in writing or reduced to writing by a Title IX Coordinator, who shall personally, or by reference to a trained designee on the Board of Education's approved list of Title IX formal complaint investigators ("Investigator"), conduct a full and fair investigation of the complaint, in accordance with the applicable regulations. Disciplinary action or other punitive remedies against a Respondent shall not be imposed until the investigation is completed, although enforcement of the Code of Conduct or discipline for other misconduct may be effectuated, even if arising from the same facts and circumstances that gave rise to the sexual harassment complaint, so long as no retaliatory basis for such discipline may be imputed. The burden of proof in determining a finding of sexual harassment is upon the district and requires a preponderance of credible and relevant evidence to establish a violation.

The Complainant and the Respondent shall be advised, in writing, of the disposition of the complaint, which may include:

1. A finding that this policy has not been violated; or
2. A finding that this policy has been violated and corrective measures have been implemented; or
3. That disciplinary action will be taken or, where pre-disciplinary charges must be preferred, that they have been preferred in order to convene a disciplinary hearing.

Alternates

The Board of Education shall appoint: more than one a Title IX Coordinator and several designated Title IX Investigators. A Complainant will have a choice of which Title IX Coordinator to approach regarding a Title IX complaint. If the complaint is about the Superintendent of Schools, the Board may stand in the Superintendent's place for review or may engage independent counsel.

Decision Maker

At the conclusion of the investigatory process, a report shall be conveyed by the Investigator to the school's Decision Maker, an central office administrator as designated by the Board of Education. The Decision Maker shall review the report and any rebuttals by the parties, determine the relevance of presented evidence, and make findings of fact and a determination whether there has been a violation of this policy, applying the preponderance of credible evidence standard. The Decision Maker shall prepare a report stating these findings and the basis thereof, and any determination as to appropriate remedies. The Investigator shall furnish all parties with such report, in accordance with regulations.

Appeal of Formal Complaints

An appeal of the Decision Maker's determination may be brought to the district's appellate authority, the Superintendent of Schools. The appeal must be submitted in writing within thirty (30) calendar days of the determination, based upon the following:

1. A procedural irregularity affecting the outcome;
2. New evidence that was reasonably not available at the time of the determination becomes available and could affect the outcome; or
3. A conflict of interest on the part of the Title IX Coordinator, Investigator, or Decision Maker affected the outcome.

A party may appeal the Title IX Coordinator's dismissal of a complaint or any allegation therein within thirty (30) calendar days of such dismissal by written submission to the Superintendent.

Confidentiality

The district's Title IX Coordinators, Investigators, the Superintendent of Schools, and the Board of Education shall, to the maximum extent possible, maintain as confidential the transaction(s) underlying a complaint and the proceedings as well as the outcome of any mediated agreement and action taken, other than formal discipline. The Respondent, however, must be informed of the identity of the person who commenced the proceedings or complaint in order to provide fair and due process. Both the Complainant and the Respondent shall be given written notice of the findings where a formal complaint has been filed.

Consequences

Any officer, supervisor, or employee who violates this policy shall be subject to corrective action up to and including termination of office or employment, with due process provided consistent with applicable contracts, law and regulations, as necessary. Students who violate this policy shall be subject to disciplinary or other corrective action, consistent with the Code of Conduct and applicable laws and regulations.

Any complaint that is determined to have been processed maliciously or in bad faith shall be deemed to be in violation of this policy and may give rise to disciplinary consequences against the Complainant.

Prevention and Protection: Education, Climate and Adult Support

There are many programs and intervention strategies designed to create relationship centered, positive school climates. Those with the best practices and research behind them are worth implementing. These programs are necessary, but *they will not protect you in a court of law*. It is a major pitfall to think that training children to interact differently is a replacement for monitoring the environment, intervening, and investigating.

Students want adults to *intervene* to stop mistreatment and harassing behavior. However, most children do not feel safe telling an adult that the behavior is occurring. The “code of silence” is strong. Teaching students the difference between telling and tattling and then giving strong positive reinforcement by taking effective action increases the likelihood that students will report.

Training students how and when to report what they observe and experience is an important part of a legally fit approach to creating a safe environment, but you should not *expect* them to report. The adults in the school system must encourage reporting while keeping an eye out for the warning signs that mistreatment is going on. It is more likely than not that students will not report situations that are taking place, so the adults must take the initiative. Get everyone in the school community- from the front office staff to school crossing guards to parents – involved.

Being a Safe & Responsive Adult

For students, a safe adult is someone who will take them seriously and take prompt action when told about peer harassment. *Safe adults clearly distinguish between the role of “friend” or “confidante” and that of a guardian*. They know their first priority is the safety of the child and any other victims who may be experiencing abuse by the bully or bullies involved.

Safe adults know that to protect students they must report what they hear. They also know how to put children at ease with the process, assuring them that while they cannot promise confidentiality, they can and will keep the matter as private as possible. *Safe adults act quickly*. They demonstrate that mistreatment and harassment will not be tolerated. *Safe adults protect students from retaliation*. If you want to create an environment in which more children report peer abuse, you have to demonstrate that it is safe and worth it to tell. *Safe adults respond effectively and stop the harmful behavior*.

One of the most critical aspects of being a responsible adult is to *monitor the situation*. You have to follow up. Did the problem really stop? How will you know that the situation is fully resolved? What will be your measure for success? Is the victim receiving sufficient assistance in the aftermath of the incident(s)? Is there more to do? These are essential questions if your response is to be both legally fit and educationally sound.

Documentation

Specific methods of documentation should interface with the student classroom and playground discipline process unique to the school district. A general rule is where documentation is concerned, the more specific the better. You want to be able to show that you recognized the behavior and took appropriate action.

Incidents that look isolated may, in fact, be part of a bigger pattern of victimization. Documentation will provide a paper trail for determining whether a pattern is occurring or this is an isolated event.

Employees who witness an incident or to whom a student complains of behavior that may be sexual harassment should always fill out an Incident Report Form. These reports should go to the complaint manager on site as well as the school district Title IX Officer.

District Responsibility

Harassment by Employee/Teacher

Even if supervisors/principals may not be held vicariously liable for the actions of the sexual harassment perpetrator, their own direct acts or omissions may form the basis for liability. Governmental immunity may not always protect school officials. Supervisors/principals may be found liable if they fail, through deliberate indifference to fulfill the duty they owe to protect employees and students. (*Gebser v. Lago Vista Independent School District*, U.S. Supreme Court, June 1998). This personal liability will exist if the student proves:

- the supervisor/school official received notice of a pattern of improper acts committed by the teacher or employee;
- the supervisor/school official demonstrated deliberate indifference to or tacit authorization of the offensive acts;
- the supervisor/school official failed to take sufficient remedial action; and
- such failure proximately caused injury to the employee or student.

Deliberate Indifference

School officials may be personally liable if they maintain a practice, custom, or policy of deliberate indifference and/or reckless disregard in instances of known sexual harassment and/or sexual abuse of students by school employees, in concealing complaints of harassment and/or abuse, and in discouraging student complaints about such conduct. (*Stoneking v. Bradford Area School District* (1992) 110 S.Ct. 840; *Gebser v. Lago Vista Independent School District*, U.S. Supreme Court, June 1998; *Davis v. Monroe County Schools*, U.S. Supreme Court, May 1999).

Avoiding Charges of Deliberate Indifference

The following is a summary of advice from the U.S. Court of Appeals Fifth Circuit ruling in *Doe v. Taylor Independent School District (TX)* (5th Cir., *en banc* March 3, 1994):

In order to avoid the cast of “deliberate indifference” as well as to safeguard students and staff, school administrators would be wise to follow the ideas suggested by the court for handling teacher misconduct:

- advise the teacher of rumors or information that the official has received and warn the person verbally and in writing that severe disciplinary action will be taken if the rumors are confirmed; [Editor’s note: Only notify the teacher at a point where the student is safe from further harassment or pressure from the teacher.]
- warn the teacher verbally and in writing to stay away from the student or staff or risk termination;
- notify the student’s parents promptly;
- report information of teacher misconduct to a superior;
- investigate information of misconduct personally;
- if founded, reprimand the teacher, verbally and in writing; and take other appropriate disciplinary steps;
- avoid making excuses or justifications for misconduct;
- record complaints and incidents of inappropriate conduct in personnel file.

The Court found that even if the above actions are ineffective to prevent or stop the abuse, they are sufficient to negate “deliberate indifference.”

Duty to Protect Employees/Students

Court decisions have found two bases for the duty of employers and educational institutions to protect employees and students from sexual harassment and child sexual abuse. These are:

1. School personnel have a duty to protect students from known or reasonable foreseeable harm occurring during or in connection with school activities; and
2. School personnel are responsible for properly monitoring and disciplining subordinates such as school teachers over whom they exercise supervisory authority.

In exercising the duty to protect students from sexual harassment and child sexual abuse, school officials have:

- A **duty to train**: providing appropriate training and instruction of all school employees and students with respect to the issues which surround sexual harassment and sexual abuse.
- A **duty to investigate**: establishing and implementing appropriate complaint and investigation procedures for employees and students to ensure that each sexual harassment and/or child sexual abuse complaint receives an immediate, appropriate, adequate and comprehensive response.
- A **duty to remedy**: providing appropriate and adequate remedial steps and follow-through to stop the sexual harassment behavior and/or child sexual abuse.
- A **duty to monitor**: enabling a sexual harassment-free school environment through continual monitoring and correcting of inappropriate behaviors.

Best Protection from Liability

It is impossible to cover all bases on which liability may attach. Minimizing the risks of sexual harassment of employees and students, as well as protecting an employer from liability, comes from:

- Having an explicit written policy against sexual harassment which clearly outlines a responsive, prompt complaint procedure;
- Following the policy;
- Providing regular training and education to all supervisory and non-supervisory employees and students regarding the policy;
- Expressing disapproval of sexual harassment and explaining the sanctions for such conduct;
- Maintaining a procedure for sexual harassment complaints that encourages victims to come forward, and does not require that they complain to an offending supervisor or adult;
- Ensuring privacy, providing effective remedies, and protecting witnesses and victims against retaliation;
- Prompt and thorough investigation of all reports or complaints of possible sexual harassment;
- Immediate corrective action when needed;
- Appropriate consequences if allegations of harassment are substantiated; and
- Prompt reporting of suspected child abuse.

It is prudent for all employees to assume the responsibility for addressing the issues of sexual harassment and sexual abuse in accordance with local, state and federal policy, practice and statutes.

RHINEBECK CSD – TITLE IX FLOW CHART

Actual Knowledge of Info Suggesting a Possible Title IX Violation

Title IX Coordinator Intake (review of supportive measures, grievance procedures, options for formal complaint)



Formal Complaint

No Formal Complaint



Referral

Title IX Coordinator may forward to appropriate supervisor/administrator to address under Code of Conduct, DASA, or Employee Contract/District Policy



Investigator Assigned & Investigation Commences

See next page.

Informal Resolution
(Voluntary; not an option for alleged employee misconduct against a student)

**Title IX Investigation, Determination and Appeal
Investigator Assigned
Decision Maker Assigned**

Title IX Investigation 1st Stage:

- Board Policy reviewed & provided to all parties
- Interviews for both complainant and respondent to present evidence
 - Interview of witnesses

Title IX Investigation 2nd Stage:

- All evidence/interview notes presented to other party
- 10 days for parties to inspect/review/comment on evidence collected
 - Completion of an Investigation Report

Discretionary Dismissal

- Respondent no longer affiliated with district
- Evidence Unavailable

Mandatory Dismissal

- Not an educational program or activity
- Conduct not Sexual Harassment
- Conduct occurred outside of Title IX jurisdiction
- Complainant withdraws complaint

Determination Phase

***Report Must include:**

- allegations,
- procedural steps taken,
- findings of fact.
- If founded propose penalty and potential remedies

*Must provide to the parties simultaneously

Appeal of Determination of Responsibility

- Procedural Irregularities
 - New evidence
 - Conflict of interest

One of which may affect the outcome

Rhinebeck Central School District
Complaint Form for Reporting Sexual Harassment

While the use of this form is not mandatory to file a complaint, its use may ensure that sufficient detail is provided.

The purpose of this form is to gather the essential facts surrounding your allegations. Should you have questions about this form or the information to be provided, please contact the District's Title IX Coordinator:

Emily Davison
(edavison@rhinebeckcsd.org)
(845) 871-5570 extension 6512

(Complainant/Student Name)

(School Building and Grade)

(Parent/Guardian Telephone Number)

(Parent/Guardian Email Address)

(Student Telephone Number)

(Student Email Address)

Date of the Incident _____ Location of the Incident _____

Individual(s) Involved in the Incident _____

Were there witnesses to the incident? If so, please identify: _____

Please describe the incident or action(s) that you believe may be sexual harassment. Please provide date(s), time(s), and location(s) as specifically as possible. Please feel free to attach additional sheets if necessary, as well as to submit copies of text messages, photos, emails, or other items you believe are relevant to the incident.

By signing below, I am requesting an investigation of these allegations of sexual harassment:

(Signature of Complainant, Parent of Minor Complainant, or TIX Coordinator)

(Date)

Forms