

Downtown College Prep Policy

Title IX Sexual Harassment Policy and Complaint Procedures: Students

DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is against the law in all schools in California (Education Codes 200, 212.6, 48900.2) and in the United States (Title IX). Sexual harassment also violates our DCP Policies. All forms of sexual harassment, whether it involves students, staff, or others, are unlawful at our schools.

Sexual harassment, as defined in Title IX, is prohibited in DCP educational programs or activities, and is defined as:

- A DCP employee conditioning the provision of an aid, benefit, or service on a person'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 DCP's education program or activity; or
- Sexual assault, dating violence, domestic violence or stalking.

Conduct which does not meet the definition of sexual harassment under Title IX may still be prohibited under the DCP's sexual harassment policy applicable to students.

Examples of types of conduct which are prohibited in the educational setting and may constitute sexual harassment include, but are not limited to:

- Unwelcome leering, sexual flirtations, or propositions.
- Unwelcome sexual slurs, epithets, threats, verbal abuse, derogatory comments, or sexually degrading descriptions.
- Graphic verbal comments about an individual's body or overly personal conversation.
- Sexual jokes, derogatory posters, notes, stories, cartoons, drawings, pictures, obscene gestures, or computer-generated images of a sexual nature.

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- Spreading sexual rumors.
- Teasing or sexual remarks about students enrolled in a predominantly single-sex class.
- Massaging, grabbing, fondling, stroking, or brushing the body.
- Touching an individual's body or clothes in a sexual way.
- Impeding or blocking movements, or any physical interference with school activities when directed at an individual on the basis of sex.
- Displaying sexually suggestive objects in the educational environment.
- Sexual assault, sexual battery, or sexual coercion.
- Electronic communications containing comments, words, or images described above. This includes sexting (sending sexually explicit photos or text), or electronic postings with sexual overtones on Instagram, Facebook, Twitter, YouTube, or other media.
- Any act of retaliation against a student who reports a violation of DCP's harassment policy, or participates in the investigation of a sexual harassment complaint.

The types of prohibited behavior identified above can take place in either/both face-to-face and/or digital environments.

Title IX Sexual Harassment Complaint Procedures: Students

Downtown College Prep is committed to maintaining a safe school environment that is free from harassment and discrimination. DCP prohibits, at school or at school-sponsored or school-related activities, sexual harassment targeted at any student by anyone. DCP also prohibits retaliatory behavior or action against any person who reports, files a complaint or testifies about, or otherwise supports a complainant in alleging sexual harassment.

DCP strongly encourages students who feel that they are being or have been sexually harassed on school grounds or at a school-sponsored or school-related activity by another student or an adult, or who have experienced off-campus sexual harassment that has a continuing effect on campus, to immediately contact their teacher, the principal, the DCP's Title IX Coordinator, or any other

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available school employee. Any employee who receives a report or observes an incident of sexual harassment shall notify the Title IX Coordinator.

Once notified, the Title IX Coordinator shall ensure the complaint or allegation is addressed through DCP's Title IX Sexual Harassment Complaint Procedures: Students or Uniform Complaint Procedures. Because a complaint or allegation that is dismissed or denied under the Title IX complaint procedure may still be subject to consideration under state law, the Title IX Coordinator shall ensure that any implementation of Title IX concurrently meets the requirements of Uniform Complaint Procedures and Complaints regarding employees.

The Title IX Coordinator shall offer supportive measures to the complainant and respondent, as deemed appropriate under the circumstances.

The CEO or designee shall inform students and parents/guardians of the DCP's sexual harassment policy by disseminating it through parent/guardian notifications, publishing it on the DCP's web site, and including it in student and staff handbooks. All DCP staff shall be trained regarding the policy.

Forms of Sexual Harassment under Title IX of the Education Amendments of 1972

The complaint procedures described shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that a student was subjected to one or more of the following forms of sexual harassment: (34 CFR 106.30)

1. A DCP employee conditioning the provision of a DCP aid, benefit, or service of DCP on the student's participation in unwelcome sexual conduct
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to DCP's education program or activity
3. Sexual assault, dating violence, domestic violence, or stalking on the basis of sex, defined as follows:
 - Forcible Sexual Assault includes any sexual act directed against a student, forcibly, against the student's will, or without consent, including rape, sodomy, sexual assault with an object, and fondling. (See 20 USC 1092(f)(6)(A)(v).)

- Non-forcible Sexual Assault includes offenses that do not involve force where the student is incapable of giving consent, including statutory rape and incest. (See 20 USC 1092(f)(6)(A)(v).)
- Dating Violence includes violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the student, where 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 and/or the frequency of interaction between the persons involved in the relationship. (See 34 USC 12291(a)(10).)
- Domestic Violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the student. (See 34 USC 12291(a)(8).)
- Stalking which includes engaging in a course of conduct directed at a student that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress. (See 34 USC 12291(a)(30).)

All other sexual harassment complaints shall be investigated and responded to pursuant to DCP's - Complaint Procedures found in the DCP Student and Family Handbook and the DCP Employee Handbook.

Instruction/Information

The CEO or designee shall ensure that all DCP students receive age-appropriate information on sexual harassment. Such instruction and information shall include:

1. What acts and behavior constitute sexual harassment, including the fact that sexual harassment could occur between people of the same sex and could involve sexual violence
2. A clear message that students do not have to endure sexual harassment under any circumstance

3. Encouragement to report observed incidents of sexual harassment even when the alleged victim of the harassment has not complained
4. A clear message that student safety is the DCP's primary concern, and that any other rule violation involving an alleged victim or any other person reporting a sexual harassment incident will be addressed separately and will not affect the manner in which the sexual harassment complaint will be received, investigated, or resolved
5. A clear message that, regardless of a complainant's noncompliance with the writing, timeline, or other formal filing requirements, every sexual harassment allegation that involves a student, whether as the complainant, respondent, or victim of the harassment, shall be investigated and action shall be taken to respond to harassment, prevent recurrence, and address any continuing effect on students
6. Information about the DCP's procedures for investigating complaints and the person(s) to whom a report of sexual harassment should be made
7. Information about the rights of students and parents/guardians to file a civil or criminal complaint, as applicable, including the right to file a civil or criminal complaint while the DCP investigation of a sexual harassment complaint continues
8. A clear message that, when needed, the DCP will implement supportive measures to ensure a safe school environment for a student who is the complainant or victim of sexual harassment and/or other students during an investigation

Disciplinary Actions

Upon completion of an investigation of a sexual harassment complaint, any student found to have engaged in sexual harassment or sexual violence in violation of this policy shall be subject to disciplinary action. For students in grades 5-12, disciplinary action may include suspension and/or expulsion,

provided that, in imposing such discipline, the entire circumstances of the incident(s) shall be taken into account.

Upon investigation of a sexual harassment complaint, any employee found to have engaged in sexual harassment or sexual violence toward any student shall be subject to disciplinary action, up to and including dismissal, in accordance with the law, DCP policies articulated in the Employee Handbook, and/or any applicable collective bargaining agreement.

Filing a Title IX Complaint can be done in several ways:

- Report an incident to any DCP employee or administrator; the DCP employee will forward the complaint to the Title IX Coordinator
- Complete and submit a physical or digital copy of the Title IX Complaint Form to the principal, assistant principal or Dean of Students or to Title IX Coordinator and/or
- Send an email to the Title IX Coordinator at A report of sexual harassment shall be submitted directly to or forwarded to the DCP's Title IX Coordinator using the contact information listed below:

Title IX Coordinator-Students:

Eileen Brown

ebrown@dcp.org

Director of Student Services

Downtown College Prep

1400 Parkmoor Ave, Suite 206

San Jose, CA

Upon receiving such a report, the Title IX Coordinator shall inform the complainant of the process for filing a formal complaint.

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Even if the alleged victim chooses not to file a formal complaint, the Title IX Coordinator shall file a formal complaint in situations in which a safety threat exists. In addition, the Title IX Coordinator may file a formal complaint in other situations as permitted under the Title IX regulations. In such cases, the alleged victim is not a party to the case, but will receive notices as required by the Title IX regulations at specific points in the complaint process.

A formal complaint, with the complainant's physical or digital signature, may be filed with the Title IX Coordinator in person, by mail, by email, or by any other method authorized by DCP. (34 CFR 106.30)

The Chief Executive Officer shall ensure that the Title IX Coordinator, investigator, decision-maker, or a facilitator of an informal resolution process does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and that such persons receive training in accordance with 34 CFR 106.45. (34 CFR 106.45)

Supportive Measures

Upon receipt of a report of Title IX sexual harassment, even if a formal complaint is not filed, the Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures which are nondisciplinary, nonpunitive, and do not unreasonably burden the other party. Such measures may include, but are not limited to, counseling, course-related adjustments, modifications of class schedules, mutual restrictions on contact, increased security, and monitoring of certain areas of the campus. The Title IX Coordinator shall consider the complainant's wishes with respect to supportive measures. (34 CFR 106.30, 106.44)

Emergency Removal from School

On an emergency basis, DCP may remove a student from DCP's education program or activity, provided that DCP conducts an individualized safety and risk analysis, determines that removal is justified due to an immediate threat to the physical health or safety of any student or other individual arising from the allegations, and provides the student with notice and an opportunity to challenge the decision immediately following the removal. This authority to remove a student does not modify a student's rights under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973. (34 CFR 106.44)

If a DCP employee is the respondent, the employee may be placed on administrative leave during the pendency of the formal complaint process. (34 CFR 106.44)

Dismissal of Complaint

The Title IX Coordinator shall dismiss a formal complaint if the alleged conduct would not constitute sexual harassment as defined in 34 CFR 106.30 even if proved. The Title IX Coordinator shall also dismiss any complaint that did not occur in DCP's education program or activity or did not occur against a person in the United States, and may dismiss a formal complaint if the complainant notifies DCP in writing that the complainant would like to withdraw the complaint or any allegations in the complaint, the respondent is no longer enrolled or employed by DCP, or sufficient circumstances prevent DCP from gathering evidence sufficient to reach a determination with regard to the complaint. (34 CFR 106.45)

Upon dismissal, the Title IX Coordinator shall promptly, and simultaneously to the parties, send written notice of the dismissal and the reasons for the dismissal. (34 CFR 106.45)

If a complaint is dismissed on the grounds that the alleged conduct does not constitute sexual harassment as defined in 34 CFR 106.30, the conduct may still be addressed pursuant to Uniform Complaint Procedures as applicable.

Informal Resolution Process

When a formal complaint of sexual harassment is filed, DCP may offer an informal resolution process, such as mediation, at any time prior to reaching a determination regarding responsibility. DCP shall not require a party to participate in the informal resolution process or to waive the right to an investigation and adjudication of a formal complaint. (34 CFR 106.45)

DCP may facilitate an informal resolution process provided that DCP: (34 CFR 106.45)

1. Provides the parties with written notice disclosing the allegations, the requirements of the informal resolution process, the right to withdraw from the informal process and resume the formal complaint process, and any consequences resulting from participating in the informal resolution process, including that records will be maintained or could be shared.
2. Obtains the parties' voluntary, written consent to the informal resolution process
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student

Formal Complaint Process

If a formal complaint is filed, the Title IX Coordinator shall provide the known parties with written notice of the following: (34 CFR 106.45)

1. DCP's formal Title IX complaint process, including any informal resolution process
2. The allegations potentially constituting sexual harassment with sufficient details known at the time, including the identity of parties involved in the incident if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident if known. Such notice shall be provided with sufficient time for the parties to prepare a response before any initial interview.

If, during the course of the investigation, DCP investigates allegations about the complainant or respondent that are not included in the initial notice, the Title IX Coordinator shall provide notice of the additional allegations to the parties.

3. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process
4. The opportunity for the parties to have an advisor of their choice who may be, but is not required to be, an attorney, and the ability to inspect and review evidence
5. The prohibition against knowingly making false statements or knowingly submitting false information during the complaint process

The above notice shall also include the name of the investigator, facilitator of an informal process, and decision-maker and shall provide either party with no less than three calendar days to raise concerns of conflict of interest or bias regarding any of these persons.

During the investigation process, DCP shall: (34 CFR 106.45)

1. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence
2. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence
3. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney
4. Not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding, although DCP may establish restrictions regarding the extent to which the advisor may participate in the proceedings as long as the restrictions apply equally to both parties
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate

6. Send in an electronic format or hard copy to both parties and their advisors, if any, any evidence that is obtained as part of the investigation that is directly related to the allegations raised in the complaint, including the evidence upon which DCP does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence obtained by a party or other source, so that each party can meaningfully respond to the evidence and have at least 10 days to submit a written response for the investigator to consider prior to the completion of the investigative report
7. Objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and determine credibility in a manner that is not based on a person's status as a complainant, respondent, or witness
8. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the determination of responsibility, send to the parties and their advisors, if any, the investigative report in an electronic format or a hard copy, for their review and written response
9. Incorporate written responses and any further follow up into the final report that is sent to the Decision maker.
10. Prior to a decision being made, DCP shall send the final written report electronically and by hard copy to the parties and their advisors, if any. After sending the investigative report to the parties for review and before a decision-maker reaches a determination regarding responsibility, the decision-maker must afford each party 10 days to allow for the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

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

DCP shall maintain confidentiality and/or privacy rights of all parties to the complaint in accordance with applicable state and federal laws, except as may be permitted or required by law or to carry out the purposes of this formal Title IX complaint process.

If the complaint is against an employee, rights conferred under an applicable collective bargaining agreement shall be applied to the extent they do not conflict with the Title IX requirements.

Written Decision

The Chief Executive Officer shall designate an employee as the decision-maker to determine responsibility for the alleged conduct, who shall not be the Title IX Coordinator or a person involved in the investigation of the matter. (34 CFR 106.45)

The decision-maker shall issue, and simultaneously provide to both parties, a written decision as to whether the respondent is responsible for the alleged conduct. (34 CFR 106.45)

The written decision shall be issued within 90 school days of the receipt of the complaint.

The timeline may be temporarily extended for good cause with written notice to the complainant and respondent of the extension and the reasons for the action. (34 CFR 106.45)

In making this determination, DCP shall use the "preponderance of the evidence" standard for all formal complaints of sexual harassment. The same standard of evidence shall be used for formal complaints against students as for complaints against employees. (34 CFR 106.45)

The written decision shall include the following: (34 CFR 106.45)

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1. Identification of the allegations potentially constituting sexual harassment as defined in 34 CFR 106.30
2. A description of the procedural steps taken from receipt of the formal complaint through the written decision, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held if DCP includes hearings as part of the grievance process
3. Findings of fact supporting the determination
4. Conclusions regarding the application of DCP's code of conduct to the facts
5. A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, any disciplinary sanctions DCP imposes on the respondent, and whether remedies designed to restore or preserve equal access to DCP's educational program or activity will be provided by DCP to the complainant
6. DCP's procedures and permissible bases for the complainant and respondent to appeal

Appeals

Either party may appeal DCP's decision or dismissal of a formal complaint or any allegation in the complaint, if the party believes that a procedural irregularity affected the outcome, new evidence is available that could affect the outcome, or a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision-maker(s) affected the outcome. If an appeal is filed, DCP shall: (34 CFR 106.45)

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
2. Ensure that the decision-maker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
4. Issue a written decision describing the result of the appeal and the rationale for the result

5. Provide the written decision simultaneously to both parties

An appeal must be filed in writing within 5 school days of receiving the determination, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered. Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights.

A written decision shall be provided to the parties within 7 school days from the receipt of the appeal.

Remedies

When a determination of responsibility for sexual harassment has been made against the respondent, DCP shall provide remedies to the complainant. Such remedies may include the same individualized services described above in the section "Supportive Measures," but need not be nondisciplinary or non punitive and need not avoid burdening the respondent. (34 CFR 106.45)

Corrective/Disciplinary Actions

DCP shall not impose any disciplinary sanctions or other actions against a respondent, other than supportive measures as described above in the section "Supportive Measures," until the complaint procedure has been completed and a determination of responsibility has been made. (34 CFR 106.44)

Discipline for sexual harassment may include suspension and/or expulsion. After the completion of the complaint procedure, if it is determined that a student at any grade level has committed sexual assault or sexual battery at school or at a school activity off school grounds, the principal shall immediately suspend the student and shall recommend expulsion. (DCP Suspension and Expulsion Policy)

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Other actions that may be taken with a student who is determined to be responsible for sexual harassment include, but are not limited to:

1. Restorative mediation or conferencing
2. Parent/guardian conference
3. Education of the student regarding the impact of the conduct on others
4. Positive behavior support
5. Referral of the student to a student success team
6. Transfer from a class or school as permitted by law
7. Denial of participation in extracurricular or co-curricular activities or other privileges as permitted by law

The Coordinator is responsible for effective implementation of any remedies ordered by DCP in response to a formal complaint of sexual harassment. To this end, the Coordinator will inform the HR department of the required remedies when an employee is found to have committed sexual harassment or retaliation against a student. DCP shall then take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law, DCP policies prohibiting unlawful harassment and retaliation as articulated in the Employee Handbook and/or in any applicable collective bargaining agreement.

Record-Keeping

The Chief Executive Officer or designee shall maintain for a period of seven years a record of all reported cases and Title IX investigations of sexual harassment, any determinations of responsibility, any audio or audiovisual recording and transcript if applicable, any disciplinary sanctions imposed, any remedies provided to the complainant, any appeal or informal resolution and the results therefrom, and responses made pursuant to 34 CFR 106.44. (34 CFR 106.45)

The Chief Executive Officer or designee shall also maintain for a period of seven years all materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), and any person who facilitates an informal resolution process. DCP shall make such training materials publicly

available on its web site, or if DCP does not maintain a web site, available upon request by members of the public. (34 CFR 106.45)

Legal Reference:

CIVIL CODE

51.9 Liability for sexual harassment; business, service and professional relationships

1714.1 Liability of parents/guardians for willful misconduct of minor

GOVERNMENT CODE

12950.1 Sexual harassment training

CODE OF REGULATIONS, TITLE 5

4600-4670 Uniform complaint procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

1092 Definition of sexual assault 1221 Application of laws

1232g Family Educational Rights and Privacy Act

1681-1688 Title IX of the Education Amendments of 1972

UNITED STATES CODE, TITLE 34

12291 Definition of dating violence, domestic violence, and stalking

UNITED STATES CODE, TITLE 42

1983 Civil action for deprivation of rights
2000d-2000d-7 Title VI, Civil Rights Act of 1964
2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended

CODE OF FEDERAL REGULATIONS, TITLE 34

99.1-99.67 Family Educational Rights and Privacy

106.1-106.82 Nondiscrimination on the basis of sex in education programs

COURT DECISIONS

Donovan v. Poway Unified School DCP, (2008) 167 Cal.App.4th 567

Flores v. Morgan Hill Unified School DCP, (2003, 9th Cir.) 324 F.3d 1130

Reese v. Jefferson School DCP, (2000, 9th Cir.) 208 F.3d 736

Davis v. Monroe County Board of Education, (1999) 526 U.S. 629

Gebser v. Lago Vista Independent School DCP, (1998) 524 U.S. 274

Oona by Kate S. v. McCaffrey, (1998, 9th Cir.) 143 F.3d 473

Doe v. Petaluma City School DCP, (1995, 9th Cir.) 54 F.3d 1447

Management Resources:

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Q&A on Campus Sexual Misconduct, September 2017

Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016

Dear Colleague Letter: Title IX Coordinators, April 2015

Sexual Harassment: It's Not Academic, September 2008

Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001

WEB SITES

California Department of Education: <http://www.cde.ca.gov>

U.S. Department of Education, Office for Civil Rights:
<http://www.ed.gov/about/offices/list/ocr> 7/20

