
Note: This policy addresses discrimination, harassment, and retaliation against ESC employees. For Title IX and other provisions regarding discrimination, harassment, and retaliation against students, see FBA. For reporting requirements related to child abuse and neglect, see ED(LEGAL).

Definitions Solely for purposes of this policy, the term “employee” includes former employees, applicants for employment, and unpaid interns.

Statement of Nondiscrimination The ESC prohibits discrimination, including harassment, against any employee or student on the basis of race, color, religion, sex, national origin, age, disability, or any other basis prohibited by law. Retaliation against anyone involved in the complaint process is a violation of ESC policy and is prohibited.

Discrimination Against Employees Discrimination against an employee is defined as conduct directed at an employee or student on the basis of race, color, religion, sex, national origin, age, disability, or any other basis prohibited by law, that adversely affects the employee’s employment or the student.

In accordance with law, discrimination on the basis of sex includes discrimination on the basis of biological sex, gender identity, sexual orientation, gender stereotypes, or any other prohibited basis related to sex.

Prohibited Conduct In this policy, the term “prohibited conduct” includes discrimination, harassment, and retaliation as defined by this policy, even if the behavior does not rise to the level of unlawful conduct. Prohibited conduct also includes sexual harassment as defined by Title IX. [See DHA(LEGAL)]

Prohibited Harassment of Employees Prohibited harassment of an employee is defined as physical, verbal, or nonverbal conduct based on an employee’s race, color, religion, sex, national origin, age, disability, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive that the conduct:

1. Has the purpose or effect of unreasonably interfering with the employee’s work performance;
2. Creates an intimidating, threatening, hostile, or offensive work environment; or
3. Otherwise adversely affects the employee’s performance, environment, or employment opportunities.

Examples Examples of prohibited harassment may include offensive or derogatory language directed at another person’s religious beliefs or

	<p>practices, accent, skin color, gender identity, or need for workplace accommodation; threatening or intimidating conduct; offensive jokes, name-calling, slurs, or rumors; cyberharassment; physical aggression or assault; display of graffiti or printed material promoting racial, ethnic, or other negative stereotypes; or other kinds of aggressive conduct such as theft or damage to property.</p>
Sex-Based Harassment	<p>As required by law, the ESC shall follow the procedures below at Response to Sexual Harassment—Title IX upon a report of sex-based harassment, including sexual harassment and gender-based harassment, when such allegations, if proven, would meet the definition of sexual harassment under Title IX. [See DHA(LEGAL)]</p>
Sexual Harassment of Employees	<p>Sexual harassment is a form of sex discrimination defined as unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:</p> <ol style="list-style-type: none">1. Submission to the conduct is either explicitly or implicitly a condition of an employee's employment, or when submission to or rejection of the conduct is the basis for an employment action affecting the employee; or2. The conduct is so severe, persistent, or pervasive that it has the purpose or effect of unreasonably interfering with the employee's work performance or creates an intimidating, threatening, hostile, or offensive work environment.
Examples	<p>Examples of sexual harassment may include sexual advances; touching intimate body parts; coercing or forcing a sexual act on another; jokes or conversations of a sexual nature; and other sexually motivated conduct, contact, or communication, including electronic communication.</p>
Reporting Procedures for Employees	<p>Any employee who believes that he or she has experienced prohibited conduct or believes that another employee has experienced prohibited conduct should immediately report the alleged acts. The employee may report the alleged acts to his or her supervisor.</p> <p>Alternatively, the employee may report the alleged acts to one of the ESC officials below.</p>
Definition of ESC Officials	<p>For the purposes of this policy, ESC officials are the Title IX coordinator, the ADA/Section 504 coordinator, and the Executive Director.</p>
<i>Title IX Coordinator</i>	<p>Reports of discrimination based on sex, including sexual harassment, may be directed to the designated Title IX coordinator. [See DAA(EXHIBIT)]</p>

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<i>ADA / Section 504 Coordinator</i>	Reports of discrimination based on disability may be directed to the designated ADA/Section 504 coordinator. [See DAA(EXHIBIT)]
<i>Executive Director</i>	The Executive Director shall serve as coordinator for purposes of ESC compliance with all other nondiscrimination laws.
Notice of Report	<p>Any ESC supervisor who receives a report of prohibited conduct shall immediately notify the appropriate ESC official listed above and take any other steps required by this policy.</p> <p>Any ESC employee who receives a report of prohibited conduct based on sex, including sexual harassment, shall immediately notify the Title IX coordinator.</p>
Alternative Reporting Procedures	<p>An individual shall not be required to report prohibited conduct to the person alleged to have committed the conduct. Reports concerning prohibited conduct, including reports against the Title IX coordinator or ADA/Section 504 coordinator, may be directed to the Executive Director.</p> <p>A report against the Executive Director may be made directly to the Board. If a report is made directly to the Board, the Board shall appoint an appropriate person to conduct an investigation.</p>
Timely Reporting	To ensure the ESC's prompt investigation, reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act.
Investigation of Reports Other Than Title IX	<p>The following procedures apply to all allegations of prohibited conduct other than allegations of harassment prohibited by Title IX. The ESC may request, but shall not require, a written report. If a report is made orally, the ESC official shall reduce the report to written form.</p> <p>[For allegations of sex-based harassment that, if proven, would meet the definition of sexual harassment under Title IX, see the procedures below at Response to Sexual Harassment—Title IX. See DHA(LEGAL)]</p>
Initial Assessment	Upon receipt or notice of a report, the ESC official shall determine whether the allegations, if proven, would constitute prohibited conduct as defined by this policy. If so, the ESC shall immediately authorize or undertake an investigation, regardless of whether a criminal or regulatory investigation regarding the same or similar allegations is pending.
Interim Action	If appropriate, the ESC shall promptly take interim action calculated to prevent prohibited conduct during the course of an investigation.

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ESC Investigation	<p>The investigation may be conducted by the ESC official or a designee, or by a third party designated by the ESC, such as an attorney. When appropriate, the supervisor shall be involved in or informed of the investigation.</p> <p>The investigation may consist of personal interviews with the person making the report, the person against whom the report is filed, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.</p>
Concluding the Investigation	<p>Absent extenuating circumstances, such as a request by a law enforcement or regulatory agency for the ESC to delay its investigation, the investigation should be completed within ten ESC business days from the date of the report; however, the investigator shall take additional time if necessary to complete a thorough investigation.</p> <p>The investigator shall prepare a written report of the investigation. The report shall be filed with the ESC official overseeing the investigation.</p>
<i>Notification of Outcome</i>	<p>Notification of the outcome of an investigation involving students shall be provided to parties in compliance with the Family Educational Rights and Privacy Act (FERPA).</p>
ESC Action	<p>If the results of an investigation indicate that prohibited conduct occurred, the ESC shall promptly respond by taking appropriate disciplinary or corrective action reasonably calculated to address the conduct.</p> <p>The ESC may take action based on the results of an investigation, even if the conduct did not rise to the level of prohibited or unlawful conduct.</p>
Confidentiality	<p>To the greatest extent possible, the ESC shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation and comply with applicable law.</p>
Appeal by Employee	<p>An employee complainant who is dissatisfied with the outcome of the investigation may appeal through DGBA(LOCAL), beginning at the appropriate level.</p> <p>The complainant may have a right to file a complaint with appropriate state or federal agencies.</p>

Response to Sexual Harassment—Title IX

General Response

For purposes of the ESC’s response to reports of harassment prohibited by Title IX, definitions can be found in DHA(LEGAL).

When the ESC receives notice or an allegation of conduct that, if proven, would meet the definition of sexual harassment under Title IX, the Title IX coordinator shall promptly contact the complainant to:

- Discuss the availability of supportive measures and inform the complainant that they are available, with or without the filing of a formal complaint;
- Consider the complainant’s wishes with respect to supportive measures; and
- Explain to the complainant the option and process for filing a formal complaint.

The ESC’s response to sexual harassment shall treat complainants and respondents equitably by offering supportive measures to both parties, as appropriate, and by following the Title IX formal complaint process before imposing disciplinary sanctions or other actions that are not supportive measures against a respondent.

If a formal complaint is not filed, the ESC reserves the right to investigate and respond to prohibited conduct in accordance with Board policies and administrative procedures.

Title IX Formal Complaint Process

To distinguish the process described below from the ESC’s general grievance policies [see DGBA and FC], this policy refers to the grievance process required by Title IX regulations for responding to formal complaints of sexual harassment as the ESC’s “Title IX formal complaint process.”

The Executive Director shall ensure the development of a Title IX formal complaint process that complies with legal requirements. [See DHA(LEGAL)] The formal complaint process shall be posted on the ESC’s website. In compliance with Title IX regulations, the ESC’s Title IX formal complaint process shall address the following basic requirements:

1. Equitable treatment of complainants and respondents;
2. An objective evaluation of all relevant evidence;
3. A requirement that the Title IX coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process not have a conflict of interest or bias;

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4. A presumption that the respondent is not responsible for the alleged sexual harassment until a determination is made at the conclusion of the Title IX formal complaint process;
5. Time frames that provide for a reasonably prompt conclusion of the Title IX formal complaint process, including time frames for appeals and any informal resolution process, and that allow for temporary delays or the limited extension of time frames with good cause and written notice as required by law;
6. A description of the possible disciplinary sanctions and remedies that may be implemented following a determination of responsibility for the alleged sexual harassment;
7. A statement of the standard of evidence to be used to determine responsibility for all Title IX formal complaints of sexual harassment;
8. Procedures and permissible bases for the complainant and respondent to appeal a determination of responsibility or a dismissal of a Title IX formal complaint or any allegations therein;
9. A description of the supportive measures available to the complainant and respondent;
10. A prohibition on using or seeking information protected under a legally recognized privilege unless the individual holding the privilege has waived the privilege;
11. Additional formal complaint procedures in 34 C.F.R. 106.45(b), including written notice of a formal complaint, consolidation of formal complaints, recordkeeping, and investigation procedures; and
12. Other local procedures as determined by the Executive Director or the ESC Board of Directors.

Standard of Evidence

The standard of evidence used to determine responsibility in a Title IX formal complaint of sexual harassment shall be the preponderance of the evidence.

Remedies Other Than Title IX

Upon final completion of the Title IX formal complaint process, including final resolution of an appeal of a Title IX dismissal or determination regarding responsibility, both parties may pursue other remedies to the extent required by state or federal law, or if permitted by local policy.

Retaliation Against Employees

The ESC prohibits retaliation against an employee who makes a claim alleging to have experienced discrimination or harassment,

or another employee who, in good faith, makes a report of harassment or discrimination, files a complaint of harassment or discrimination, serves as a witness, or otherwise participates or refuses to participate in an investigation.

Examples

Examples of retaliation may include termination, refusal to hire, demotion, and denial of promotion. Retaliation may also include threats, intimidation, coercion, unjustified negative evaluations, unjustified negative references, or increased surveillance.

Sanctions Against Employees

Sanctions against employees for violation of this policy may include an oral or written warning, transfer, demotion, termination of employment, or other sanction deemed appropriate by the Executive Director or designee.

Records Retention

The ESC shall retain copies of allegations, investigation reports, and related records regarding any prohibited conduct in accordance with the ESC's records control schedules but for no less than the minimum amount of time required by law. [See CP]

[For Title IX recordkeeping and retention provisions, see DHA(LEGAL) and the ESC's Title IX formal complaint process.]

Access to Policy and Procedures

Information regarding this policy and any accompanying procedures shall be distributed annually to ESC employees. Copies of the policy and procedures shall be posted on the ESC's website, to the extent practicable, and readily available at each campus and the ESC's administrative offices.