Wonderful college prep academy™

Board Policy: Title IX Sexual Harassment Complaint Policy and Procedures

The complaint procedures described in this policy shall be used to address any complaint governed by Title IX of the Education Amendments of 1972, alleging that a student, while in an education program or activity in which a school exercises substantial control over the context and respondent, was subjected to one or more of the following forms of sexual harassment: (34 CFR 106.30, 106.44)

1. An employee conditioning the provision of an aid, benefit, or service 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 the education program or activity.

3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291.

All other sexual harassment complaints or allegations brought by or on behalf of students shall be investigated and resolved in accordance with Wonderful College Prep Academy's ("WCPA") uniform complaint procedures. A report of sexual harassment shall be submitted directly to or forwarded to WCPA's Title IX Coordinator using the contact information listed below.

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

Supportive Measures

Upon receipt of a report of Title IX sexual harassment, even if a formal complaint is not filed, the Title IX Coordinator or designee shall promptly contact the complainant to discuss the availability of supportive measures which are non-disciplinary, non-punitive, 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, WCPA may remove a student from WCPA's education program or activity, provided that WCPA 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 WCPA employee is the respondent, the employee may be placed on 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 in which the alleged conduct did not occur in WCPA's education program or activity or did not occur against a person in the United States. (34 CFR 106.45)

The Title IX Coordinator may dismiss a formal complaint if the complainant notifies WCPA 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 WCPA, or sufficient circumstances prevent WCPA 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 send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties and shall inform them of their right to appeal the dismissal of a formal complaint or any allegation in the complaint in accordance with the appeal procedures described in the section "Appeals" below. (34 CFR 106.45)

If a complaint is dismissed, the conduct may still be addressed pursuant to WCPA's uniform complaint procedures as applicable.

Informal Resolution Process

When a formal complaint of sexual harassment is filed, WCPA may offer an informal resolution process, such as mediation, at any time prior to reaching a determination regarding responsibility. WCPA 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)

WCPA may facilitate an informal resolution process provided that WCPA: (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.

Written Notice

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. WCPA's 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.

3. If, during the course of the investigation, new Title IX allegations arise 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.

4. 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.

5. 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.

6. 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 (if any), and decision-maker and shall inform the parties that, if at any time a party has concerns regarding conflict of interest or bias regarding any of these persons, the party should immediately notify the Title IX Coordinator.

Investigation Procedures

During the investigation process, WCPA's designated investigator 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 WCPA 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, the evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint and provide the parties 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.

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. (34 CFR 106.45)

Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.

Written Decision

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

After the investigative report has been sent to the parties, but before reaching a determination regarding responsibility, the decision-maker shall afford each party 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.

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 60 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, the decision-maker 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)

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 WCPA includes hearings as part of the grievance process.

3. Findings of fact supporting the determination.

4. Conclusions regarding the application of WCPA's code of conduct or policies to the facts.

5. A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, any disciplinary sanctions WCPA imposes on the respondent, and whether remedies designed to restore or preserve equal access

to WCPA's educational program or activity will be provided by WCPA to the complainant.

6. WCPA's procedures and permissible bases for the complainant and respondent to appeal.

Appeals

Either party may appeal WCPA's decision or dismissal of a formal complaint or any allegation in the complaint, if the party believes that any of the following three grounds for appeal are present: (34 CFR 106.45)

1. A procedural irregularity affected the outcome.

2. New evidence is available that could affect the outcome.

3. 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, WCPA 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 10 days of receiving the notice of the decision or dismissal, 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.

A written decision shall be provided to the parties within 20 days from the receipt of the appeal. WCPA's decision may be appealed to the California Department of Education within 30 days of the written decision in accordance with WCPA's uniform complaint procedures.

In addition to the above, either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights within 180 days of the date of the most recently alleged misconduct. The complainant shall be advised of any civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders that may be available under state or federal antidiscrimination laws, if applicable.

Remedies

When a determination of responsibility for sexual harassment has been made against the respondent, WCPA 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 non-disciplinary or nonpunitive and need not avoid burdening the respondent. (34 CFR 106.45)

Corrective/Disciplinary Actions

WCPA 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)

For students in grades 4-12, 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 or Superintendent shall immediately suspend the student and shall recommend expulsion. (Education Code 48900.2, 48915)

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. Transfer from a class or school as permitted by law.

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. Denial of participation in extracurricular or cocurricular activities or other privileges as permitted by law.

When an employee is found to have committed sexual harassment or retaliation, WCPA shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law.

Record-Keeping

The Superintendent or designee shall maintain, for a period of seven years: (34 CFR 106.45)

1. 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, and any appeal or informal resolution and the results therefrom.

2. A record of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, including WCPA's basis for its conclusion that its response was not deliberately indifferent, the measures taken that were designed to restore or preserve equal access to the education program or activity, and, if no supportive measures were provided to the complainant, the reasons that such a response was not unreasonable in light of the known circumstances.

3. All materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), and any person who facilitates an informal resolution process. WCPA shall make such training materials publicly available on its web site.

Title IX Coordinator/Uniform Complaint Compliance Officer

WCPA designates the following individuals as the responsible employees to coordinate its efforts to comply with Title IX of the Education Amendments of 1972 and California Education Code Section 234.1, as well as to investigate and resolve sexual harassment complaints under WCPA's uniform complaint procedures. WCPA's Title IX Coordinator and Uniform Complaint Compliance Officer may be contacted at:

WCPA's Title IX Coordinator:

Bill Toomey, Chief Business Officer
Wonderful College Prep Academy, Main Office
2070 Veneto Street, Delano, CA 93215
(661) 721-2887
Bill.Toomey@wonderfulcollegeprep.org

WCPA's Uniform Complaint Compliance Officer:

Ana Martinez, Interim Superintendent
Wonderful College Prep Academy, Main Office
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