

SECTION: J – Students
G – Employees
POLICY TITLE: Sexual Harassment
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1. PURPOSE

- 1.1. Nebo School District is committed to maintaining an educational environment in which all students and employees are treated with respect and dignity. Paramount to that aim is ensuring that students and employees are not subjected to sexual harassment.
- 1.2. Sexual harassment is prohibited by Title IX of the Education Amendments of 1972 (Title IX), which provides that “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. §1681(a). Federal regulations found at 34 CFR 106 implementing Title IX further outline the requirements placed upon the District.

2. SCOPE

- 2.1. This policy is intended to protect District students and employees against sexual harassment, whether by students, employees, volunteers, or others under the District’s control. This policy also subjects those who engage in sexual harassment to disciplinary action.
- 2.2. Conduct that does not rise to the level of sexual harassment as defined herein but that constitutes inappropriate or offensive sexual behavior is still prohibited and will be investigated and addressed under Nebo School District Policy JD, Student Conduct and Discipline or Policy GCPD, Employee Discipline, Administrative Leave, and Termination.
- 2.3. Discrimination on the basis of sex in hiring, benefits, programs, or activities as prohibited by Title IX, Title VII, and the Utah Antidiscrimination Act, is investigated and addressed under Nebo School District Policy JDC, Student Discrimination and Harassment, or Policy GBEB, Employee

[Discrimination and Harassment.](#)

3. TITLE IX COORDINATOR

- 3.1. The Nebo School District Civil Rights Coordinator is designated as the Title IX Coordinator for protection against sexual harassment and is authorized to coordinate the District's efforts to comply with the requirements of Title IX. All sexual harassment issues should be directed to the Title IX Coordinator.

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4. DEFINITIONS

- 4.1. **“Actual Knowledge”** means notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any District official who has authority to institute corrective measures on behalf of the District, or to any District employee.
- 4.2. **“Complainant”** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- 4.3. **“Formal complaint”** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an education program or activity of the District. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by email, using the contact information listed for the Title IX Coordinator above. The formal complaint must contain the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint. A parent or guardian may sign and file a formal complaint on behalf of a minor complainant.
- 4.4. **“Respondent”** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- 4.5. **“Sexual harassment”** means conduct on the basis of sex that satisfies one or more of the following:
- 4.5.1. A District employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (*quid pro quo*);
- 4.5.2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it denies a person equal access to the District's education program or activity;
- 4.5.2.1. Severe: Based on whether the described occurrence or conduct was severe from the perspective of a reasonable person in the complainant's position.
- 4.5.2.2. Pervasive: A single instance of an offensive comment or joke typically does not meet the Title IX standard for sexual harassment requiring investigation, but there may be instances where a single unwelcome act may meet that standard. Factors to consider include, but are not limited to, whether there is a pattern of sexual harassment, the number of people involved, and whether the unwelcome sex-based conduct involves widespread dissemination of offensive material.

- 4.5.2.3.** Objectively Offensive: Based on whether the described occurrence or conduct was offensive from the perspective of a reasonable person in the complainant’s position. Notably, the perspective for offensiveness is based on the reasonableness from the complainant’s perspective, and the intent of the respondent is irrelevant in the analysis. “Just joking” is not an accepted excuse.
- 4.5.2.4.** Effectively Denies Equal Access: This does not require that a complainant be entirely or physically excluded from educational opportunities, but rather that the sexual harassment has so undermined and detracted from the complainant’s educational experience, that he or she is effectively denied equal access to the school’s resources and opportunities. Thus, a student does not need to have dropped out of school, failed a class, had a panic attack, or otherwise reach a “breaking point.” Although no concrete injury is required to show a deprivation of equal educational access, examples of the signs of unequal educational access may include, but are not limited to:
- 4.5.2.4.1.** Bed-wetting due to sexual harassment,
 - 4.5.2.4.2.** An athlete who quits the team but carries on with other school activities following sexual harassment,
 - 4.5.2.4.3.** Skipping class to avoid a harasser,
 - 4.5.2.4.4.** A decline in a student’s grade point average, or
 - 4.5.2.4.5.** Having difficulty concentrating in class.
- 4.5.3.** Any instance of
- 4.5.3.1.** Sexual assault as defined by the Title IX regulations, which is the unwelcome touching of a person’s private body parts for the purpose of sexual gratification. In determining whether conduct meets this definition, administrators shall consider all the circumstances surrounding the incident, such as the age and maturity of the parties, the duration of the incident, the location and secretive nature of the actions, the intent of the parties, and the effects on the parties;
 - 4.5.3.2.** Dating violence as defined by the Title IX regulations, which is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant, which may be determined by (1) the length of the relationship, (2) the type of relationship, and (3) the frequency of interaction between the persons involved in the relationship;
 - 4.5.3.3.** Domestic violence as defined by the Title IX regulations, which includes violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under Utah law, or by any other person against a complainant who is protected from that person’s acts under Utah law; or
 - 4.5.3.4.** Stalking as defined by the Title IX regulations, which is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.
- 4.5.4.** *Quid pro quo* harassment under paragraph 4.5.1 and offenses involving sexual assault, dating violence, domestic violence, or stalking under subsection 4.5.3 are not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, because such misconduct is sufficiently serious to deprive a person of equal access.

- 4.6. “Supportive measures”** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the District’s education program or activity without unreasonably burdening either party, including measures designed to protect the safety of all parties or the District’s educational environment, or deter sexual harassment.

5. COMPLAINT PROCEDURE

- 5.1.** Individuals who believe they have been subjected to sexual harassment should immediately notify a teacher, administrator, or the Title IX Coordinator and may file a formal complaint.
- 5.2.** A report or notice of alleged sexual harassment may be filed by someone other than a complainant, in which case the procedures for a response and supportive measures under Section 7 will be followed. However, an investigation under Section 8 is completed only upon receipt of a formal complaint signed by the Title IX Coordinator, a complainant, or, if a minor, the complainant’s parent.
- 5.3.** A formal complaint must be in writing and must be delivered to the Title IX Coordinator and include the elements described in paragraph 4.3. It should also provide the following information if possible:
- 5.3.1.** Name, home address, email address, and telephone number of the complainant;
 - 5.3.2.** Date(s) of incident(s) giving rise to the complaint;
 - 5.3.3.** Name(s) of respondent(s);
 - 5.3.4.** Description of the conduct or incident(s) giving rise to the complaint;
 - 5.3.5.** Description of the harm caused by the incident; and
 - 5.3.6.** Description of the remedy sought. Providing a description of the remedy sought does not confer authority on the complainant or the complainant’s parent to determine the discipline imposed on the respondent. The imposition of remedies, including any disciplinary action, lies only within the authority and sole discretion of the District and may not be divested to others.

6. EMPLOYEE RESPONSIBILITY TO REPORT

- 6.1.** An employee with actual knowledge of sexual harassment or allegation of sexual harassment shall, as soon as is reasonably possible, notify the Title IX Coordinator.
- 6.2.** Any school employee who observes or otherwise becomes aware of conduct that may constitute sexual harassment against a student or employee shall report the conduct to the Title IX Coordinator whether the student files a complaint or not.

7. INITIAL RESPONSE, SUPPORTIVE MEASURES, AND EMERGENCY REMOVAL

- 7.1.** The Title IX Coordinator must be notified whenever any employee becomes aware of an allegation of, or conduct that may constitute, sexual harassment. Actual knowledge of such conduct or allegation may be made known through a variety of means, including but not limited to verbal complaints by students or parents, notice from an employee, direct observation, or as facts are disclosed during normal disciplinary proceedings. Any school employee with actual knowledge of sexual harassment shall promptly report directly to the Title IX Coordinator.
- 7.2.** If a school administrator becomes aware of sexual conduct, including sexual conduct described in [Nebo School District Policy JD](#) and [Policy GCPD](#), the administrator shall conduct an initial assessment to determine whether the conduct might meet the definition of sexual harassment

under this policy. If there is evidence that the conduct constitutes sexual harassment, or if a reasonable person would consider the conduct sexual harassment under this policy, the school administrator shall report the conduct to the Title IX Coordinator. For situations involving students, either the Title IX Coordinator or the school administrator shall contact the parents.

- 7.3. Upon receipt of actual knowledge of sexual harassment or allegations of sexual harassment, the Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, explain to the complainant the process for filing and investigating a formal complaint, and explain to the complainant that the parties may have an adult advisor of their choice throughout the investigation of a formal complaint.
- 7.4. The Title IX Coordinator should consult with the school administrator and implement supportive measures. In addition, the school administrator may provide, upon receiving an allegation of sexual harassment, appropriate and immediate supportive measures to the complainant even before the Title IX Coordinator contacts the complainant.
- 7.5. Supportive measures may include counseling; extensions of deadlines or other course-related adjustments; modifications of work or class schedules; campus escort services; mutual restrictions on contact between the parties; supervised transitions; changes in work, learning, or activity locations; increased security and monitoring of certain areas of the campus; and other similar measures.
- 7.6. The District must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures.
- 7.7. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.
- 7.8. The Title IX Coordinator, in consultation with the school administrator and applicable director, may conduct an emergency removal of a respondent from the District's education program or activity. To remove a respondent on an emergency basis, the District must undertake an individualized safety and risk analysis and determine that an immediate threat to the physical health or safety of a student or other individual arising from the allegations of sexual harassment justifies the removal. The respondent must be given notice and an opportunity to challenge the decision immediately following the removal. An emergency removal may not constitute or be documented as disciplinary action.
- 7.9. If the Title IX Coordinator receives a report from a student, parent, school employee, or school administrator before receiving a formal complaint, the Title IX Coordinator shall interview the complainant and determine whether to sign a formal complaint on behalf of the complainant.
- 7.10. The Title IX Coordinator may consolidate formal complaints against more than one respondent, or by more than one complainant against one or more respondents, where the allegations of sexual harassment arise out of the same facts or circumstances.

8. INVESTIGATION

The procedures outlined in this section are detailed and constitute the recommended best practice. Minor omissions and other procedural inconsistencies do not invalidate an otherwise equitable investigation. Investigators must be flexible and adapt to the circumstances of each complaint.

8.1. Dismissal

- 8.1.1. Upon receipt of a formal complaint, the Title IX Coordinator determines whether the complaint must or may be dismissed. A dismissal may occur at any point in the investigation.

- 8.1.1.1.** The Title IX Coordinator must dismiss the complaint if any of the following conditions apply:
 - 8.1.1.1.1.** The conduct alleged would not constitute sexual harassment as defined in this policy even if proved;
 - 8.1.1.1.2.** The conduct alleged did not occur in a District program or activity; or
 - 8.1.1.1.3.** The conduct alleged did not occur against a person in the United States.
- 8.1.1.2.** The Title IX Coordinator may dismiss the complaint or any of the allegations therein if any of the following conditions apply:
 - 8.1.1.2.1.** A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
 - 8.1.1.2.2.** The respondent is no longer enrolled or employed by the District; or
 - 8.1.1.2.3.** Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the allegations contained in the formal complaint.
- 8.1.1.3.** Dismissal under this paragraph does not preclude action under another District policy. The District has the flexibility to provide supportive measures in response to allegations of conduct, and to investigate such conduct, that does not involve sexual harassment but is otherwise prohibited under District policy, including bullying, discrimination, harassment, and other sexually inappropriate conduct.
- 8.1.1.4.** If dismissed, the Title IX Coordinator shall promptly notify both parties in writing of a dismissal decision and shall give both parties equal right to appeal a dismissal decision.

8.2. Informal Resolution

- 8.2.1.** If the complainant and respondent agree, a formal complaint may be resolved through the District's informal resolution process rather than through a formal investigation. The following conditions must be met:
 - 8.2.1.1.** Informal resolution can never be used to resolve complaints alleging that an employee sexually harassed a student.
 - 8.2.1.2.** Informal resolution may not be offered unless a formal complaint is filed.
 - 8.2.1.3.** The initial written notice of allegations sent to both parties must include information about the informal resolution process.
 - 8.2.1.4.** The parties retain their right to a formal investigation and cannot be required to participate in the informal resolution process. They can withdraw from informal resolution and resume a formal investigation process at any time before agreeing to a resolution.
- 8.2.2.** Either party may request informal resolution. A party's request may be made at any point in an investigation before a final determination is issued under subsection 9.4.
- 8.2.3.** Informal resolution may not begin until both parties have provided voluntary written

consent to the informal resolution process.

8.2.4. After receiving written consent of the parties, the Title IX Coordinator will cause the investigation to stop and will appoint a facilitator to oversee the informal resolution process.

8.2.4.1. The facilitator must be free from conflicts of interest or bias and be trained to serve impartially;

8.2.4.2. The facilitator must be trained on Title IX requirements and procedures and in dispute resolution processes such as negotiation, mediation, or restorative justice.

8.2.4.3. The facilitator must be selected from among the District's legal counsel or the trained investigators listed in subsection 8.3.

8.2.4.4. The facilitator may not be the investigator assigned to investigate the formal complaint.

8.2.5. Before the informal resolution process begins, the facilitator must issue written notice to each party describing the terms of the informal resolution process. The written notice must include the following:

8.2.5.1. The allegations found in the formal complaint;

8.2.5.2. The requirements of the informal resolution process;

8.2.5.3. The circumstances under which the process precludes the parties from resuming a formal investigation arising from the same allegations, such as following the conclusion of the informal resolution process;

8.2.5.4. Any other consequences resulting from participating in the informal resolution process; and

8.2.5.5. Identification of the records that will be maintained or could be shared.

8.2.6. The informal resolution process must have reasonably prompt time frames.

8.2.7. The Title IX Coordinator may provide additional guidelines for the informal resolution process that are consistent with this policy.

8.3. Assignment of Investigator

8.3.1. The Title IX Coordinator shall notify the applicable Director of Secondary or Elementary Education, the Director of Human Resources, or any other applicable administrator when opening an investigation and designating an investigator.

8.3.2. Either the Title IX Coordinator or the Human Resources Officer shall serve as the primary investigator. If neither is available, the Civil Rights Coordinator may select from among the following secondary investigators, as long as the individual selected has been trained to conduct sexual harassment investigations under this policy:

8.3.2.1. Human Resources Coordinators;

8.3.2.2. School Services Coordinator;

8.3.2.3. Junior High/Middle School Supervisor;

8.3.2.4. Elementary Education Supervisor; and

8.3.2.5. Independent contractors who have received the training required under this

policy.

- 8.3.3.** The investigator may be assisted by department and school administrators, who may conduct the following parts of an investigation:
 - 8.3.3.1.** Meet with the Complainant (including parents/guardians of a student Complainant) and have them complete the formal Title IX complaint form;
 - 8.3.3.2.** Be present at the meetings with the Title IX Coordinator and/or Human Resources Officer when the formal Title IX investigative and adjudicative process and Informal Resolution process are explained to the Complainant and Respondent;
 - 8.3.3.3.** Review, copy, and retain any relevant surveillance video footage;
 - 8.3.3.4.** Identify, obtain, and retain documents or other physical evidence;
 - 8.3.3.5.** Identify witnesses;
 - 8.3.3.6.** Assist the Investigator with interviews by taking notes; and
 - 8.3.3.7.** In coordination with the investigator, conduct some initial and follow-up witness interviews
- 8.3.4.** The investigator must receive training on the definition of sexual harassment under this policy, the scope of the District's education programs and activities, how to conduct an investigation, how to determine relevance to create an investigative report that fairly summarizes relevant evidence, how to write and issue an investigative report, and how to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias.
- 8.3.5.** The investigator should begin each investigation by documenting the alleged conduct using the Sexual Harassment Investigator Checklist (Checklist) and creating an investigation file. The investigator completes the Checklist as the investigation proceeds.
- 8.3.6.** The investigator shall refer the matter to law enforcement authorities or the Utah State Division of Child and Family Services, where appropriate or required by law. The investigator must continue to conduct the investigation even if the matter has been referred to another agency. The investigator should coordinate with the other agency and may adjust timelines and procedures accordingly.

8.4. Investigative Procedures

The District must ensure that investigations include the following steps. If an investigation is reassigned to a new investigator after it has begun, the new investigator shall gather all evidence and information from the previous investigator. The new investigator may, but is not required to, repeat interviews or other investigative procedures conducted by the previous investigator.

- 8.4.1.** The investigator shall ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the District and not on the parties. Access to a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in their capacity in connection with the party's treatment can only be obtained through the party's voluntary, written consent (if the party is a minor, consent must be from the parent).
- 8.4.2.** Notice of Allegations

Upon receipt of a formal complaint, the Title IX Coordinator shall provide the following written notice to the parties who are known. If, in the course of the investigation, the

District decides to investigate allegations about the complainant or respondent that are not included in the initial notice, the Title IX Coordinator must provide notice of the additional allegations, including the details identified in subsection 8.3.2.2, to the parties whose identities are known.

- 8.4.2.1.** Notice of the District's complaint and investigation process, including any informal resolution process available;
- 8.4.2.2.** Notice of the allegations of sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the following, if known:
 - 8.4.2.2.1.** The identities of the parties involved in the incident;
 - 8.4.2.2.2.** the conduct allegedly constituting sexual harassment under this policy; and
 - 8.4.2.2.3.** the date and location of the alleged incident;
- 8.4.2.3.** A statement that the respondent is presumed innocent until a determination has been made at the conclusion of the investigation;
- 8.4.2.4.** A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and that the parties may inspect and review evidence as described below; and
- 8.4.2.5.** A statement that District policy prohibits knowingly making false statements or knowingly submitting false information during the investigation and that a party found to have done so is subject to disciplinary action.

8.4.3. Interviews

- 8.4.3.1.** The investigator shall provide written notice of the date, time, location, participants, and purpose of all investigative interviews to a party whose participation is invited or expected, with sufficient time for the party to prepare to participate.
- 8.4.3.2.** The investigator shall provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- 8.4.3.3.** Each of the following persons shall be interviewed, and a record made of their conversations.
 - 8.4.3.3.1.** The complainant. The complainant may be accompanied by an adult representative, including legal counsel. The complainant may present evidence supporting the complaint.
 - 8.4.3.3.1.1.** In cases of sexual assault or other severe trauma, the investigator should seek assistance from professionals trained in interviewing children. Such professionals may include designated officials from the Children's Justice Center, the Department of Child and Family Services, or some other private or governmental agency.
 - 8.4.3.3.1.2.** The investigator shall comply with the reporting requirements found in [Nebo School District Policy JHFA, Child Abuse or Neglect](#).

8.4.3.3.2. The respondent. The respondent may be accompanied by an adult representative, including legal counsel. The respondent may present evidence refuting the allegations set forth in the complaint. The investigator should gather a signed, written statement from the respondent.

8.4.3.3.3. Anyone who witnessed the alleged conduct. The investigator should gather a signed witness statement from each witness using the District's Sexual Harassment Witness Statement form.

8.4.3.3.4. Anyone mentioned as having related information. The investigator should document all conversations related to the alleged incident.

8.4.3.4. The investigator may have additional conversations with any of the individuals listed in subsection 8.3.3.3. to ensure that all relevant facts have been gathered.

8.4.4. Preservation of Evidence

The investigator shall gather and preserve all evidence, including video footage from surveillance cameras, photos, physical evidence, documents, correspondence, and any relevant electronic information such as text messages, videos, and social media postings.

8.4.5. Investigative Report

8.4.5.1. Prior to completing the investigative report, the investigator shall send to each party and the party's advisor (if applicable) the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten (10) calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report.

8.4.5.2. The investigator shall objectively evaluate all relevant evidence, including the credibility of all statements,

8.4.5.3. The investigator shall prepare a written report of the investigation. The report should be completed using the Sexual Harassment Investigative Report Form. The report must "fairly summarize relevant evidence," and should include the following:

8.4.5.3.1. A description of the complaint;

8.4.5.3.2. A description of the interim supportive measures provided to the complainant and/or the respondent;

8.4.5.3.3. A detailed description of the investigation, including names and dates of individuals interviewed; receipt of written statements; and evidence considered, including video and audio recordings, correspondence, etc.; and

8.4.6. The investigator shall provide a copy of the investigative report simultaneously to the parties and notify them that they have ten (10) calendar days to provide a response, including written questions they would like asked of any party or witness. The investigator notifies the parties that their response and questions should be submitted to the applicable decision-maker. The investigator also submits a copy of the investigative report to the Title IX Coordinator and to the decision-maker.

9. DECISION-MAKING

9.1. Decision-Makers

- 9.1.1. The Director of Human Resources, Director of Secondary Education, and Director of Elementary Education are designated as decision-makers for Title IX sexual harassment complaints.
- 9.1.2. The decision-maker cannot be the same person as the Title IX Coordinator or the investigator.
- 9.1.3. The decision-maker may not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- 9.1.4. The decision-maker must receive training on the following: the definition of sexual harassment under this policy, the scope of the District's education programs and activities, how to conduct an investigation, how to issue a written determination, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

9.2. Parties' Response to Investigative Report

- 9.2.1. Upon receipt of the investigative report, the decision-maker may contact the parties and provide direction for the submission of responses and questions.
- 9.2.2. 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 alleged conduct 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.
- 9.2.3. The decision-maker must explain to a party proposing a question any decision to exclude the question as not relevant.
- 9.2.4. Upon receipt of relevant questions from a party, the decision-maker submits the questions to the witness or party to whom they are directed and establishes a timeframe in which the questions must be answered. Upon receipt of the answers, the decision-maker provides them to the parties who proposed the questions.
- 9.2.5. At the decision-maker's discretion, the decision-maker may permit limited follow-up questions from the parties.

9.3. Decision-Making Process

- 9.3.1. The decision-maker must issue a written determination as to whether the respondent committed sexual harassment.
- 9.3.2. The decision-maker objectively evaluates all relevant evidence gathered and presented during the investigation, as found in the investigative report, along with the answers to any written questions and follow-up questions to parties and witnesses as a response to the investigative report. The decision-maker evaluates the evidence, judging credibility based on factors of plausibility and consistency in party and witness statements, and then reaches a determination regarding responsibility.
- 9.3.3. The decision-maker may consult with the investigator, District Legal Counsel, and other administrators as applicable in making a determination, except for the Superintendent and his/her designee to whom an appeal would be directed.
- 9.3.4. The decision-maker shall base the determination on the preponderance of the evidence standard. The District shall apply the same standard to all formal complaints of sexual

harassment, whether the complaint involves a student or employee.

9.3.5. The Written Determination must include:

- 9.3.5.1.** Identification of the allegations potentially constituting sexual harassment as defined in this policy;
- 9.3.5.2.** A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;
- 9.3.5.3.** Findings of fact supporting the determination;
- 9.3.5.4.** Conclusions regarding the application of the District's code of conduct to the facts;
- 9.3.5.5.** A statement of, and rationale for, the result as to each allegation, including a determination, any disciplinary sanctions imposed on the respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided by the District to the complainant; and
- 9.3.5.6.** The District's procedures and permissible bases for the complainant and respondent to appeal.

9.3.6. If the respondent is a student and found to have committed sexual harassment, the decision-maker shall ensure that the behavior and resulting disciplinary action is documented in the Student Information System.

9.3.7. The Title IX Coordinator, coordinating with other applicable administrators, is responsible for effective implementation of any remedies under a decision regarding sexual harassment.

9.4. Issuance of Written Determination

9.4.1. At the conclusion of the decision-making process, the decision-maker shall provide the written determination to the parties simultaneously.

9.4.2. The decision-maker also provides a copy of the written determination to the Title IX Coordinator.

10. APPEALS

10.1. Investigative procedures conducted under this policy may be appealed by both complainants and respondents. The purpose of an appeal under this section is to determine whether the investigative procedures outlined in this policy were followed. An appeal may also be filed to introduce new evidence not available during the investigation, or if a party believes there was a conflict of interest of the Title IX Coordinator, investigator, or decision-maker. If an appeal does not introduce new evidence or allege a conflict of interest or violation of the investigative procedures of this policy, it will be denied. Disagreement with the outcome of an investigation or with an investigator's interpretation or findings of the facts is not grounds for an appeal under this policy.

10.2. A student who has been disciplined as a result of an investigation under this policy may appeal in accordance with [Nebo School District Policy JD, Student Conduct and Discipline](#), subject to certain limitations outlined in this paragraph. If a student appeals a long-term suspension issued as a result of a written determination under this policy, the student's appeal must be made directly to the assistant superintendent for consideration by the Discipline Review Committee as outlined in Policy JD. However, because of the due process already afforded through a sexual harassment

investigation under this policy, an appeal (or request for hearing) under this paragraph is not a de novo review but rather is limited to the issues outlined in paragraph 10.1, namely whether the investigative procedures were followed, to consider new evidence, or to challenge alleged bias or conflict of interest of an individual involved in the investigative process.

- 10.3.** An employee complainant or respondent may appeal a final determination in accordance with the grievance procedures outlined in the applicable employee handbook. The appeal is limited to the issues allowed under the handbook’s grievance procedures.
- 10.4.** A student complainant may appeal by giving written notice to the Superintendent within ten (10) calendar days of the date of the written determination. Failure to submit written notice of appeal to the Superintendent within ten (10) calendar days constitutes forfeiture of any right to appeal. The Superintendent or his/her designee will hear the appeal and issue a written decision as to whether the investigative procedures of this policy were followed, whether there was a conflict of interest, or whether new evidence would change the outcome of the investigation. The decision of the Superintendent or his/her designee is final.

11. CONFIDENTIALITY

- 11.1.** It is District policy to respect, as far as possible, the privacy and anonymity of all parties and witnesses to complaints brought under this policy. However, because an individual’s right to confidentiality must be balanced with the District’s obligations to cooperate with law enforcement, government agency investigations, or legal proceedings, or to investigate and take necessary action to resolve a complaint, including by allowing each party the chance to provide information to the investigator, information about the complaint may be disclosed in appropriate circumstances, and for other good reasons that apply to the particular situation. The investigator also may discuss the complaint with one or more of the following persons:
 - 11.1.1.** The Superintendent, Director of Human Resources, Coordinator of Student Services, Civil Rights Coordinator, Director of Elementary Education, Director of Secondary Education, Director of Special Education / Federal Programs, Director of Operations, District Legal Counsel, or other applicable school or District administrator;
 - 11.1.2.** The parent/legal guardian of a student complainant;
 - 11.1.3.** The parent/legal guardian of a student respondent;
 - 11.1.4.** A teacher or staff member whose knowledge of the students involved may help in determining who is telling the truth;
 - 11.1.5.** Utah State Division of Child and Family Services for purposes of investigating child abuse reports; and
 - 11.1.6.** Law enforcement agencies where the investigator has reasonable suspicion that the alleged conduct involves criminal activity.
- 11.2.** Where a complaint involves allegations of child abuse, the complaint shall be immediately reported to appropriate law enforcement authorities or the Utah State Division of Child and Family Services. The anonymity of both the complainant and school officials involved in the investigation will be strictly protected as required by [UTAH CODE ANN. § 62A-4a-412](#).

12. RETALIATION PROHIBITED

Retaliation against any person who has filed a complaint, or has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this policy is prohibited, and therefore, subject to disciplinary action. Retaliation may include, but is not limited to, continued Harassment, threats, taunting, spreading rumors, unauthorized disclosure of the details of an investigation, ostracism, assault, destruction of property, or other negative conduct toward participants in response to an investigation and the events causing it. Anyone found to have engaged in retaliation will be subject

to disciplinary action. Participants in an investigation, including victims, respondents, and witnesses, must report to the investigator any conduct that might reasonably constitute retaliation.

13. DISCIPLINE AND REMEDIAL ACTION

- 13.1.** Any student who engages in sexual harassment of anyone at school or at any school-related activity or event is in violation of this policy and shall be subject to disciplinary action consistent with [Nebo School District Policy JD, Student Conduct and Discipline](#). Disciplinary action may include, but is not limited to, suspension, expulsion, exclusion or loss of extracurricular activities, probation, or alternate educational placement. In imposing such discipline, all facts and circumstances of the incident(s) shall be taken into account.
- 13.2.** Any employee who engages in sexual harassment of any student at school or at a school-related activity or event is in violation of this policy and shall be subject to disciplinary action consistent with [Nebo School District Policy GCPD, Employee Discipline, Administrative Leave, and Orderly Termination](#). Disciplinary action may include, but is not limited to, warnings, reprimands, probation, disciplinary transfer, suspension, reduction in pay or hours, or termination. In imposing such discipline, all facts and circumstances of the incidents(s) shall be taken into account.
- 13.3.** If an investigation finds evidence of sexual harassment, the District shall implement remedial action necessary to eliminate its effects upon the victim and the school environment. Remedial action may include changes to school or District programs, offerings, facilities, rules, policies, or practices.

14. FALSE COMPLAINTS

Intentionally false, malicious, or frivolous complaints of sexual harassment shall result in corrective or disciplinary action taken against the complainant.

15. RECORD KEEPING

- 15.1.** The Title IX Coordinator shall maintain a confidential record separate from the individual's educational or personnel file that includes the complaint, response, witness statements, evidence, investigative report, written determination, any appeal and the result therefrom, and any informal resolution and the result therefrom for the later of seven years or two years after a student complainant or student respondent has graduated.
- 15.2.** All student discipline issued for violations of this policy shall be documented by the Decision Maker on the District's Student Information System ("SIS"). Consistent with the U.S. Department of Education Civil Rights Data Collection, the documentation must indicate that sexual harassment served as the basis for which the student was disciplined.
- 15.3.** All complaints made under this policy involving a student must be documented by an administrator on the District's Student Information System ("SIS"). Complaints must be documented even if the investigation results in a finding that this policy was not violated. Consistent with the U.S. Department of Education Civil Rights Data Collection, the documentation must indicate that the violation constituted sexual harassment.
- 15.4.** All complaints and allegations of sexual harassment shall be kept confidential except as necessary to carry out the investigation or take other subsequent necessary action.
- 15.5.** Records of complaints and investigations shall be retained in accordance with applicable federal and state law.

16. TRAINING

Nebo School District recognizes the importance of educating its employees and students regarding the prevention of sexual harassment and the observance of high ethical standards. To these ends, the District will provide ongoing training and education in this area. Notice of this policy will be distributed, and training will be conducted for employees and students of the District.

17. DISSEMINATION OF POLICY

This policy may be posted on the District’s website and published in student registration materials, student and employee handbooks, parent information guides, and other appropriate school publications as directed by the District. The following nondiscrimination notice shall be disseminated.

Notice of Nondiscrimination: It is the policy of Nebo School District not to discriminate on the basis of race, color, national origin, sex, sexual orientation, gender identity, religion, disability, age, or any other legally protected classification in its educational programs, activities, admissions, access, treatment, or employment practices. Nebo School District provides equal access to the Boy Scouts and other designated youth groups.

Questions, concerns, complaints, and requests regarding this nondiscrimination policy should be directed to the following Individuals:

Civil Rights Coordinator: Student and employee issues regarding discrimination, harassment, and sexual harassment in District programs, activities, events, and services. The Civil Rights Coordinator serves as the District Title IX Coordinator, Section 504 Coordinator, Title IV Coordinator, Title VI Coordinator, and Title VII Coordinator. [[Section 504 of the Rehabilitation Act of 1973](#); [Titles IV, VI, and VII of the Civil Rights Act of 1964](#); [Title IX of the Education Amendments of 1972](#); [Americans with Disabilities Act \(ADA\)](#)]

Risk Manager: Physical barriers to building access and physical barriers to educational programs, activities, events, and services. [[Americans with Disabilities Act \(ADA\)](#)]

Director of Human Resources: Employee accommodation requests due to physical or mental impairments. [[Americans with Disabilities Act \(ADA\)](#)]

The Civil Rights Coordinator, Risk Manager, and Director of Human Resources may be reached at Nebo School District Administrative Offices, 350 South Main, Spanish Fork, UT 84660; Telephone No. 801-354-7400.

Additionally, concerns may be directed to the U.S. Department of Education, Office for Civil Rights, 1244 Speer Boulevard, Suite 310, Denver, CO 80204-3582; Telephone No. 303-844-5695; Fax No. 303-844-4303; TDD No. 877-521-2172.

EXHIBITS

Nebo School District Student Discrimination and Harassment Complaint Procedures Flowchart

REFERENCES

[Title IX of the Education Amendments of 1972, 20 U.S.C. §1681\(a\); 34 CFR 106 Utah Code Ann. § 62A-4a-412.](#)
[Nebo School District Policy GBEB, Employee Discrimination and Harassment](#)
[Nebo School District Policy GBEF, Employee/Student Standards of Conduct](#)
[Nebo School District Policy GBHB, Information and Communication Technology/Social Networking](#)
[Nebo School District Policy GCPD, Employee Discipline, Administrative Leave, and Orderly Termination](#)
[Nebo School District Policy JD, Student Conduct and Discipline](#)
[Nebo School District Policy JDC, Student Discrimination and Harassment](#)
[Nebo School District Policy JDD/GBEA, Prohibition of Bullying, Hazing, and Retaliation](#)
[Nebo School District Policy JDG, Student Dress and Grooming](#)
[Nebo School District Policy JHFA, Child Abuse or Neglect](#)
[Nebo School District Policy JR, Section 504 of the Rehabilitation Act of 1973](#)

FORMS

Sexual Harassment Investigation Checklist
[Sexual Harassment Formal Complaint](#)
 Sexual Harassment Response
 Sexual Harassment Witness Statement
 Sexual Harassment Investigation Report

HISTORY

Revised: 13 April 2022 – added provisions related to informal resolution; modified investigative and appeal processes; made technical changes.

Adopted: 8 July 2020 – sexual harassment was previously addressed under Nebo School District Policies JDC, Student Discrimination and Harassment and GBEB, Employee Discrimination and Harassment. but Title IX regulations issued by the U.S. Department of Education on May 6, 2020 created new definitions and imposed separate procedures for sexual harassment, resulting in the creation of this policy while other forms of discrimination and harassment continue to be addressed in Policies JDC and GBEB.

NEBO SCHOOL DISTRICT SEXUAL HARASSMENT INVESTIGATION FLOWCHART

