

Hypothetical for Title IX Investigators' Training

CONFIDENTIAL
Delivered in Person

October 6, 2020

Re: Notice of Allegations

Dear Respondent:

On October 1, 2020, the High School District (District) received a formal complaint against you, Respondent, alleging that you sexually harassed Complainant on August 21, 2020, while in the campus library. The purpose of this letter is to notify you of the allegations against you, the relevant policies, your supportive measures, your rights and responsibilities, and the District's complaint process.

Allegations. The Complainant alleges that Respondent engaged in the following conduct:

On or about August 21, 2020, Respondent tutored Complainant after school in the library. Respondent put a hand on Complainant's knee, made comments about sexual acts, and then touched Complainant's groin area. When Complainant moved away, Respondent moved towards Complainant. Complainant immediately left the library.

As a Respondent, you are presumed *not* to be responsible for the alleged misconduct listed above unless and until a trained, impartial, non-biased hearing panel reaches a different determination. If additional allegations are revealed during the investigation, this office will provide Complainant and Respondent with an additional written notice.

Potential Policy Violations, Corrective Action and/or Sanctions. These allegations, if found to have occurred, may violate the policies listed below:

- ***Sexual harassment in the form of unwelcome physical and verbal conduct on the basis of sex*** as defined in Administrative Regulation (AR) 5145.71 and Title IX regulations 34 CFR Part 106, §106.30(a). ***Title IX Sexual Harassment Definition*** - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies Complainant equal access to the District's education program or activity.
- ***Sexual harassment in the form of fondling*** as defined in AR 5145.71 and Title IX regulations 34 CFR Part 106, §106.30(a) and the FBI Uniform Crime Reporting (UCR) Program NIBRS Offense definitions. ***Title IX Fondling Definition*** - The touching of the private body parts of another person for the purpose of sexual gratification without the

Hypothetical for Title IX Investigators' Training

consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

If found responsible for the alleged misconduct, Respondent may be subject to corrective action and sanctions up to and including no contact orders, suspension, expulsion, involuntary transfer, and/or other disciplinary or corrective measures.

Supportive Measures. As discussed on the telephone, we agreed to provide you with supportive measures during the complaint process, including your request for a two-week extension of your Spanish project deadline, a weekly check-in with your counselor, a referral to off-campus counseling options for you to explore at your own cost, and a change in the time of your speech session. If at any time these supportive measures need adjustment or you feel you need additional support, please speak with your counselor or contact my office as soon as possible.

Rights and Responsibilities. As noted above, during this complaint process, the Respondent is presumed *not* to be responsible for the alleged misconduct unless and until a trained, impartial, non-biased hearing panel reaches a different determination. The hearing panel will not make a determination of responsibility until after an investigation where the Complainant and Respondent will be given an opportunity to review and comment on all directly related and/or relevant evidence obtained during the investigation.

The Complainant and Respondent may each have an advisor of their choice, who may be, but is not required to be, an attorney. The advisor may be present for your meetings, interviews, hearing and/or during the decision-making process, and the advisor may inspect and review any evidence obtained as part of the investigation. Your advisor may assist with any the decision-making process, including the written cross-examination process.

The District prohibits the Complainant, Respondent, and any witness from knowingly making false statements or knowingly submitting false information during the complaint process. (See AR 5145.71.)

Investigation Process. The District has assigned a Title IX Investigator, Sam Lee,¹ to investigate the sexual harassment allegations reported by Complainant.

This investigation will be conducted in a prompt, thorough, and impartial manner. The Investigator intends to interview the Complainant, relevant witnesses, and Respondent in a

¹ If you believe Sam Lee has a general or specific conflict of interest or bias, please contact me to discuss within three business days after receiving this letter.

Hypothetical for Title IX Investigators' Training

discrete and confidential manner. Disclosure of facts and allegations by the Investigator to persons interviewed will be limited to what is reasonably necessary to complete a fair and thorough investigation. You may bring an advisor of your choice, such as a parent, support person, or attorney to your interview or related meetings. The Investigator will keep Complainant and Respondent informed of the progress of this investigation.

The Investigator will also review any documents and other information relevant to the allegations. If you have any materials that you believe may be relevant to this investigation that you have not already submitted to the District, please send those to me or give copies to the Investigator during your upcoming interview (e.g., emails, texts, instant messages, photos, social media postings, videos, notes or other documents). However, if you have photos or videos involving nudity or sexual activity of minors, please do not forward those to us at this time. The District may need to take certain precautions before viewing such materials. The Investigator may, however, ask you to recount what you observed to be contained in the relevant photo or video material. During the investigation, the Investigator will inspect the evidence and assess the relevance, weight, and credibility of the information provided. Please note, you must not tamper with or alter any evidence, and you must not tamper with or attempt to alter any witness testimony.

Prior to completing the investigation, the Investigator will send you, the Complainant, and your respective advisors (if any) the evidence that has been gathered, likely in the form of a confidential Draft Report of Evidence. You and your advisor may inspect and review evidence and will have at least 10 days to submit a written response. You are not authorized to release any of the evidence to the public.

After reviewing any written responses, the Investigator will prepare a confidential Final Investigative Report that fairly summarizes the relevant evidence, and the Final Investigative Report will be forwarded to the Complainant and Respondent (and their respective advisors, if any). Complainant and Respondent will both have at least 10 days to submit another written response regarding the Final Investigative Report, which will be attached to the report.

Decision Maker and Determination of Responsibility. After the parties' review and comment period, the Investigator will provide the Final Investigative Report to me, and I will assign the decision making responsibility to Pat Solario.² I will send you a Notice of Decision-Making Process, which will explain the procedures and rights afforded to you, which are also described below. Before the Decision-Maker reaches a determination regarding responsibility, the Complainant and Respondent will have the opportunity to submit written, relevant questions

² If you believe Pat Solario has a general or specific conflict of interest or bias, please contact me to discuss within three business days after receiving this letter.

Hypothetical for Title IX Investigators' Training

that a party wants the Decision-Maker to ask of another party or witness. The Decision-Maker will provide Complainant and Respondent with the answers, and allow for additional, limited follow-up questions from Complainant and Respondent. The Decision-Maker must explain any decision to exclude a question as not relevant. The Decision-Maker may also ask you clarifying questions and share your answers with the Respondent.

After considering the Investigative Report and the answers to any questions, the Decision-Maker will issue a written determination regarding responsibility. The Decision-Maker will make findings of fact, reach conclusions, explain the rationale, and determine whether policy has been violated based on a preponderance of the evidence standard (i.e., "it is more likely than not" the allegation occurred or did not occur). The Decision-Maker may also make recommendations for any sanctions against the Respondent or remedies for the Complainant, if applicable. The District will send the Complainant and Respondent a written decision, sometimes called a Notice of Outcome. The Notice of Outcome will explain how each party can file an appeal. If a finding is made that Respondent has not violated the District's policies, then the investigation will be closed, but the Complainant may still receive Supportive Measures.

If a finding is made that Respondent violated District policy, the matter will be referred to the applicable administrator, who will review any recommendations and determine and implement the appropriate disciplinary action for violation of the policy. Regardless of the outcome of the investigation, the District shall determine what occurred and whether any corrective actions or supportive measures are needed to prevent or address any issues discovered during the investigation. After exhausting any appeal procedure, the District will implement the sanctions for Respondent and remedies for Complainant, if any.

Timelines. The District endeavors to complete the investigation and complaint process within reasonably prompt time frames, typically within 60-90 calendar days from date the formal complaint was filed. If the District has good cause to extend the time lines, the District will provide written notice to the Complainant and Respondent explaining the reasons for the delay and the needed extension.

Informal Resolution Process. You are not required to participate in an informal resolution process. However, at any time prior to the Hearing Panel's determination regarding responsibility, you may request an informal resolution process that does not involve a full investigation and adjudication. Please contact me to discuss informal resolution options. An informal resolution process will be initiated only upon written consent from all parties. If the matter is resolved through an informal resolution process, then the complaint will be dismissed. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the complaint process.

Hypothetical for Title IX Investigators' Training

Confidentiality. The District will keep the identity of the Complainant, Respondent, and witness(es) confidential unless required by law or as necessary to carry out this complaint process. As such, the District will, to the extent possible, maintain your privacy and/or confidentiality during the complaint process. However, the Complainant and Respondent are not restricted from discussing the allegations under investigation or from gathering and presenting relevant evidence during the investigation process needed to support their case, unless the parties have entered a written agreement to restrict them from releasing of confidential information.

No Retaliation. The District or other person may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing. If you believe you have been retaliated against, please contact this office immediately.

If you have any additional questions during the complaint process, please do not hesitate to contact me at (916) 923-1200 during District hours or send me an email at TIXC@HSDIST.edu.

Sincerely,
Title IX Coordinator