

Revised 7/07	<b>ARIZONA DEPARTMENT OF EDUCATION</b>  <b>GUIDELINE &amp; PROCEDURE</b>	NO. HR-20 (A)
Supersedes 3/04		SHEET 1 of 10
<b>SUBJECT: SEX DISCRIMINATION AND SEXUAL HARASSMENT FOR STUDENTS IN STATE-OPERATED SCHOOLS</b>		<b>FILING INSTRUCTIONS</b> (Guidelines & Procedures Manual) Section: Human Resources As item: HR-20 (A)

## **I. PURPOSE OF THIS GUIDELINE**

All schools operated by state agencies are committed to creating and maintaining a learning environment in which all individuals are treated with respect and dignity. Each student has the right to learn in an environment free of sex discrimination and sexual harassment. Sex discrimination and sexual harassment violate federal and state law, and will not be tolerated.

Title IX of the Education Amendments of 1972 and the federal regulations implementing the law prohibit discrimination on the basis of sex in any education program or activity receiving federal financial assistance. This policy has been enacted by the Arizona Department of Education to ensure that students in state operated schools have a prompt and equitable mechanism for filing complaints related to sex discrimination or sexual harassment, in compliance with federal law. This guideline is intended to coordinate with the existing Title IX grievance procedures that have already been established by many of the agencies covered by this guideline. This guideline provides a review procedure that students may utilize after the existing procedures at their school have been exhausted. This guideline also provides a Title IX grievance procedure for students attending state-operated schools that do not already have one, as well as a mechanism for students to follow if they are challenging a state-wide guideline or decision they believe discriminates on the basis of sex. This guideline further advises employees and staff of state-operated schools of their responsibilities to refrain from discriminatory conduct and to act promptly to stop sex discrimination or sexual harassment when it occurs.

## **II. GUIDELINE**

Sex discrimination and sexual harassment, whether verbal, physical, or environmental, is illegal and will not be tolerated. The law views sex discrimination and sexual harassment as a violation of a person's civil rights, just like discrimination on the basis of race, national origin, religion or disability. Sexual harassment, which is a form of sex discrimination, can contribute to a general atmosphere where members of the victim's sex suffer the consequences and in which all students may feel that their safety is compromised. Sexual harassment has no legitimate educational purpose. Retaliation against a person who has filed a sex discrimination complaint or cooperated in an investigation is also illegal and a violation of this guideline.

Educators and staff in state-operated schools have a duty to ensure that they do not discriminate on the basis of sex and to avoid language or behavior that could be construed as sexual

Revised 7/07	<b>ARIZONA DEPARTMENT OF EDUCATION</b>  <b>GUIDELINE &amp; PROCEDURE</b>	NO. HR-20 (A)
Supersedes 3/04		SHEET 2 of 10
<b>SUBJECT: SEX DISCRIMINATION AND SEXUAL HARASSMENT FOR STUDENTS IN STATE-OPERATED SCHOOLS</b>		<b>FILING INSTRUCTIONS</b> (Guidelines & Procedures Manual) Section: Human Resources As item: HR-20 (A)

harassment. If educators or staff witness discriminatory behavior or receive a complaint alleging sex discrimination, they should immediately report it to their supervisor or the agency's Title IX Coordinator so that the state agency can promptly and appropriately respond to the situation. In certain circumstances, it may be necessary for staff to act immediately in order to stop continuing harassment or discriminatory behavior. **THIS GUIDELINE IN NO WAY AFFECTS OR CHANGES STAFF'S RESPONSIBILITIES TO REPORT SUSPECTED CASES OF CHILD SEXUAL ABUSE OR OTHER CRIMINAL CONDUCT TO THE POLICE, CHILD PROTECTIVE SERVICES, OR OTHER AUTHORITIES.**

**I. DEFINITIONS AND STATEMENT OF PROHIBITED CONDUCT**

There are basically three kinds of sex discrimination that are prohibited by law and this guideline: treating a person differently on the basis of sex, discriminatory policies and sexual harassment. Although these definitions are meant to provide a general understanding of the legal requirements, whether or not sex discrimination has occurred depends on the specific facts involved in each case.

**A. Differential Treatment**

Treating an individual (or class of individuals) differently because of that person's sex is a form of unlawful sex discrimination. As an example, it would be unlawful to discourage a female student from taking a course about computers based on the assumption that males are more technically adept than females, or to discourage a male student from taking a course about early childhood education based on the assumption that females are better caretakers of young children than males.

**B. Discriminatory Guidelines**

Enacting guidelines or utilizing administrative procedures that have a discriminatory effect on the basis of sex is also a form of sex discrimination. As an example, it would be unlawful for a state-operated school to offer sports programs only for boys and not offer sports for girls. It is not, however, discriminatory for a school to offer separate housing, toilet, athletic and other facilities on the basis of sex, so long as the facilities provided to each sex are comparable.

**C. Sexual Harassment**

Revised 7/07	<b>ARIZONA DEPARTMENT OF EDUCATION</b>  <b>GUIDELINE &amp; PROCEDURE</b>	NO. HR-20 (A)
Supersedes 3/04		SHEET 3 of 10
<b>SUBJECT: SEX DISCRIMINATION AND SEXUAL HARASSMENT FOR STUDENTS IN STATE-OPERATED SCHOOLS</b>		<b>FILING INSTRUCTIONS</b> (Guidelines & Procedures Manual) Section: Human Resources As item: HR-20 (A)

Sexual harassment is unwelcome behavior of a sexual nature by peers, teachers, administrators, or anyone a student must interact with in order to pursue school activities. Sexual harassment can consist of unwelcome advances, requests for special favors, and any other verbal, written, visual or physical conduct of a sexual nature. Although it is difficult to fully define sexual harassment because so much depends on the individual case, below are some general guidelines.

1. Sexual harassment can occur if a student is put in a position of having to bargain or exchange sexual favors in order to receive a benefit or avoid a negative consequence. For example, it would be illegal for a teacher to tell a student that the student must submit to sexual conduct in order to avoid a bad grade on a test.
2. Another type of sexual harassment can occur when unwelcome jokes, comments or visual displays of a sexual nature create a hostile environment or substantially interferes with a student's ability to learn. For example, if a physical education teacher repeatedly made remarks about students' bodies whenever students changed clothes in a locker room, that conduct would likely create a hostile environment and be considered unlawful sexual harassment.
3. Both boys and girls can be victims of sexual harassment. Both boys and girls, as well as men and women, can be considered the harasser. The victim and harasser do not have to be of the opposite sex. Sexual harassment between people of the same sex is just as detrimental and just as illegal as when the victim and harasser are of the opposite sex.
4. The harasser does not have to be the victim's teacher. Sexual harassment can occur because of the words or other actions of other students, or other staff at the state-operated school.
5. The victim does not have to be the person to whom the unwelcome sexual conduct is directed. The victim also may be someone who is affected by such conduct when it is directed toward another person.
6. Sexual harassment does not depend on the victim's having suffered a concrete injury as a result of the harasser's conduct. For example, improper sexual advances which do not result in the loss of some educational benefit to the victim may still constitute sexual harassment.

Revised 7/07	<b>ARIZONA DEPARTMENT OF EDUCATION</b>  <b>GUIDELINE &amp; PROCEDURE</b>	NO. HR-20 (A)
Supersedes 3/04		SHEET 4 of 10
<b>SUBJECT: SEX DISCRIMINATION AND SEXUAL HARASSMENT FOR STUDENTS IN STATE-OPERATED SCHOOLS</b>		<b>FILING INSTRUCTIONS</b> (Guidelines & Procedures Manual) Section: Human Resources As item: HR-20 (A)

7. A victim of sexual harassment is not required to tell the harasser that the conduct is unwelcome.

#### D. Retaliation

The Arizona Department of Education and the state-operated schools covered by this guideline will not retaliate or permit retaliation against an individual who makes a report of sex discrimination or sexual harassment. Retaliation is a serious violation of this guideline. Unlawful retaliation includes taking some kind of negative action against students or staff who file a complaint pursuant to this guideline, or assist in the investigation process. Retaliation not only harms the individuals directly affected by it, but also undermines the confidence of other students in a fair complaint resolution process. Any person found to have retaliated against another individual involved in an investigation of sexual harassment shall be subject to appropriate disciplinary action, up to and including dismissal from employment or student discipline, in accordance with the guidelines of the state-operated school.

## II. INDIVIDUALS COVERED BY THE GUIDELINE

This guideline applies to students attending schools operated by Arizona state agencies, for which ADE receives and passes through federal funds for the operation of an education activity or program. As of March 2004, students attending schools operated by the following state agencies are covered by this guideline:

Arizona Department of Corrections  
 Arizona Department of Juvenile Corrections  
 Arizona State Hospital  
 Arizona State Schools for the Deaf and Blind  
 Arizona State Prison Complex

The prohibitions against sex discrimination described above apply to all teachers, teaching assistants, coaches, administrators, contract employees, guest speakers, volunteers, janitorial or cafeteria staff, and students of state-operated schools.

This guideline does NOT apply to all students in the State of Arizona, but only to those students attending state-operated schools. Students who attend school district schools, accommodation

Revised 7/07	<b>ARIZONA DEPARTMENT OF EDUCATION</b>  <b>GUIDELINE &amp; PROCEDURE</b>	NO. HR-20 (A)
Supersedes 3/04		SHEET 5 of 10
<b>SUBJECT: SEX DISCRIMINATION AND SEXUAL HARASSMENT FOR STUDENTS IN STATE-OPERATED SCHOOLS</b>		<b>FILING INSTRUCTIONS</b> <small>(Guidelines &amp; Procedures Manual)</small> Section: Human Resources As item: HR-20 (A)

schools or charter schools should utilize their own school’s guidelines and procedures for filing sex discrimination and sexual harassment complaints.

#### **IV. INFORMAL RESOLUTION PROCEDURES**

Sometimes problems of sex discrimination and sexual harassment may be resolved informally. Informal resolution may include talking or writing to the person who has taken the action that you believe is discriminatory. However, no law requires a student to try to resolve a problem informally before filing a formal complaint or taking legal action. In the case of sexual harassment, failure to express unwelcomeness to the harasser does not prevent a student from filing a complaint.

A student may report the incident of sex discrimination or sexual harassment to a teacher, administrator or counselor, but is not required to do so. If a teacher or other school employee does receive a report of sex discrimination or sexual harassment, however, that person must report it to the school’s Title IX Coordinator, or to ADE’s Title IX Coordinator, within three (3) business days so that appropriate investigation and action may be taken.

#### **V. FORMAL COMPLAINT PROCEDURES**

##### **A. Confidentiality**

Confidentiality will be maintained throughout the entire investigatory process to the extent practicable and as permitted by law. The Family Educational Rights Privacy Act (“FERPA”) will be followed if students’ educational records are reviewed or disclosed during an investigation. While every effort will be made to ensure that information is provided only to people who have a need to know it, students should also be aware that the law imposes obligations to report cases of suspected child sexual abuse or other criminal conduct to the authorities. Nothing in this guideline does, or can, change these reporting obligations imposed by Arizona law.

##### **B. Procedures for Students Attending State Operated Schools That Have an Existing Title IX Grievance Procedure.**

Some state-operated schools already have a designated Title IX Coordinator and have established a procedure for students to use to file complaints regarding sex discrimination and sexual

Revised 7/07	<b>ARIZONA DEPARTMENT OF EDUCATION</b>  <b>GUIDELINE &amp; PROCEDURE</b>	NO. HR-20 (A)
Supersedes 3/04		SHEET 6 of 10
<b>SUBJECT: SEX DISCRIMINATION AND SEXUAL HARASSMENT FOR STUDENTS IN STATE-OPERATED SCHOOLS</b>		<b>FILING INSTRUCTIONS</b> (Guidelines & Procedures Manual) Section: Human Resources As item: HR-20 (A)

harassment. Information as to who the Title IX Coordinator is and how you should file a complaint should be readily available at your school.

If your school has such a procedure, you should follow it through to its conclusion. While you may notify the ADE Title IX Coordinator about your Complaint of sex discrimination or sexual harassment, in almost all cases the ADE Title IX Coordinator will allow the administrators at your school to investigate the complaint and attempt to resolve it.

#### Right to Appeal

If you are dissatisfied with the investigation or resolution of your Complaint of sex discrimination or sexual harassment conducted by your school, you may appeal in writing to the ADE Title IX Coordinator within ten business days of receiving written notice of the outcome of the investigation. Your appeal must state the particular reasons why you believe the school's resolution of the matter was incorrect. You may contact the ADE Title IX Coordinator in writing or by phone at:

ADE Title IX Coordinator/Human Resources Director  
 Arizona Department of Education  
 1535 West Jefferson Street, Bin #9  
 Phoenix, Arizona 85007  
 (602) 542-3186  
[humanresources@ade.az.gov](mailto:humanresources@ade.az.gov)

Although you do not have to send a copy of your appeal to your school's Title IX Coordinator, doing so will help ADE review your appeal in a timely manner. The ADE Title IX Coordinator or his/her designee will request information from the school, review your appeal and then notify you of the outcome within ten (10) business days of receiving the necessary information from the school. If additional time is needed to consider the appeal, the parties will be so advised and given an alternative time frame, not to exceed 45 days from the date the appeal was received by ADE.

Please note that ADE may not be in a position to require the school to impose disciplinary conduct on a particular individual. However, ADE will give full and impartial consideration to any appeals filed and will take actions necessary and appropriate to remedy instances of sex discrimination or sexual harassment.

Revised 7/07	<b>ARIZONA DEPARTMENT OF EDUCATION</b>  <b>GUIDELINE &amp; PROCEDURE</b>	NO. HR-20 (A)
Supersedes 3/04		SHEET 7 of 10
<b>SUBJECT: SEX DISCRIMINATION AND SEXUAL HARASSMENT FOR STUDENTS IN STATE-OPERATED SCHOOLS</b>		<b>FILING INSTRUCTIONS</b> (Guidelines & Procedures Manual) Section: Human Resources As item: HR-20 (A)

**C. Procedures for Students Attending State Operated Schools That DO NOT Have an Existing Title IX Grievance Procedure.**

If your school does not already have a Title IX procedure for filing and investigating complaints of sexual harassment or sex discrimination, you should follow these steps to file a Complaint.

Form of Complaint. Complaints of sex discrimination and sexual harassment will be accepted in writing or orally. You may file a Complaint or request a Complaint form by contacting:

ADE Title IX Coordinator/Human Resources Director  
 Arizona Department of Education  
 1535 West Jefferson Street, Bin # 9  
 Phoenix, Arizona 85007  
 (602) 542-3186  
[humanresources@ade.az.gov](mailto:humanresources@ade.az.gov)

A complaint need not be made on an official form in order for the ADE Title IX Coordinator to accept it, however.

Content of Complaint. A Complaint alleging sex discrimination or sexual harassment should include the following information: your name, a description of the offending behavior-including times, places, and the name of or identifying information about the alleged perpetrator, and the names or descriptions of any witnesses to the conduct. If you have written documentation supporting your claims, that should be included as well.

Processing of Complaints. The ADE Title IX Coordinator or his/her designee is responsible for overseeing the processing of sex discrimination and sexual harassment complaints.

1. Investigator. After receiving a complaint of sex discrimination or sexual harassment, the ADE Title IX Coordinator shall conduct, or appoint someone to conduct, an investigation of the complaint. Depending on the circumstances, the ADE Title IX Coordinator may appoint an administrator at your school to conduct the investigation.

Revised 7/07	<b>ARIZONA DEPARTMENT OF EDUCATION</b>  <b>GUIDELINE &amp; PROCEDURE</b>	NO. HR-20 (A)
Supersedes 3/04		SHEET 8 of 10
<b>SUBJECT: SEX DISCRIMINATION AND SEXUAL HARASSMENT FOR STUDENTS IN STATE-OPERATED SCHOOLS</b>		<b>FILING INSTRUCTIONS</b> <small>(Guidelines &amp; Procedures Manual)</small> Section: Human Resources As item: HR-20 (A)

2. Timing – Interview of Person Filing Complaint. Specifically, the Title IX Coordinator or his/her designee shall contact the person filing the Complaint within five (5) business days after ADE receives the Complaint. The Title IX Coordinator or his/her designee will attempt to arrange a telephonic or in-person interview with the person filing the Complaint within ten (10) business days after receiving the Complaint. Students who are being interviewed as part of an investigation have the right to have their parents or another adult present at the interview.
3. Objectivity. The complainant is entitled to an investigation conducted by an impartial investigator. Thus, if the people charged with overseeing or investigating sexual harassment complaints are implicated in the complaint, or have any personal or professional stake in the process that would cause a conflict of interest, the Title IX Coordinator shall conduct the investigation and make findings or shall designate someone impartial to do so.
4. Investigation Process. The ADE Title IX Coordinator or his/her designee will interview witnesses and gather relevant documentation to decide whether or not sex discrimination or sexual harassment occurred. The complainant and/or the alleged harasser may have a representative present during any interviews conducted. In determining whether alleged conduct constitutes sex discrimination or sexual harassment occurred, the totality of the circumstances, the nature of the conduct and the context in which the alleged conduct occurred will be considered. Allegations of sexual harassment will be evaluated using a preponderance of the evidence standard-that is, before imposing any sanctions the Title IX Coordinator or his/her designee must conclude that it is more likely than not that the harassment occurred.
5. Timing – Concluding the investigation. Within 30 days of receiving the complaint, the ADE Title IX Coordinator or his/her designee shall make a finding of whether sex discrimination and/or sexual harassment occurred. However, if the Title IX Coordinator or his/her designee believes that more time will be necessary, the Coordinator will advise the parties as to when the Coordinator expects to complete the investigation and will attempt to do so within 60 days of receiving the complaint.
6. Notice of Outcome. Within five (5) business days after concluding the investigation, the ADE Title IX Coordinator or his/her designee shall notify the parties to the proceeding of his/her findings about whether or not sex discrimination or sexual harassment occurred.

Revised 7/07	<b>ARIZONA DEPARTMENT OF EDUCATION</b>  <b>GUIDELINE &amp; PROCEDURE</b>	NO. HR-20 (A)
Supersedes 3/04		SHEET 9 of 10
<b>SUBJECT: SEX DISCRIMINATION AND SEXUAL HARASSMENT FOR STUDENTS IN STATE-OPERATED SCHOOLS</b>		<b>FILING INSTRUCTIONS</b> (Guidelines & Procedures Manual) Section: Human Resources As item: HR-20 (A)

7. Appeals. A party who is dissatisfied with the investigation or resolution of an allegation of sexual harassment may appeal in writing to the ADE Title IX Coordinator or the Deputy Superintendent of Public Instruction within ten (10) business days of receiving written notice of the outcome of the investigation. The Deputy Superintendent of Public Instruction can be contacted by writing to: Arizona Department of Education, Deputy Superintendent of Public Instruction, 1535 West Jefferson Street, Phoenix, Arizona 85007. The party must specify the particular grounds upon which the appeal is based. The Title IX Coordinator or Deputy Superintendent of Public Instruction will respond to the appeal within ten (10) business days. If additional time is needed to consider the appeal, the parties will be so advised and given an alternative time frame, not to exceed 30 days from the date the appeal was received by ADE.

## **VI. SANCTIONS**

Students or staff members of state-operated schools who have engaged in sex discrimination and sexual harassment shall be disciplined appropriately, up to and including employee discharge or student discipline in accordance with the guidelines of the state-operated school.

## **VII. OTHER LEGAL REMEDIES**

Although students are encouraged to utilize the procedures set forth above, victims of sex discrimination or sexual harassment may also file a complaint with an appropriate government agency, such as the Office for Civil Rights within the U.S. Department of Education, or file a grievance under the relevant collective bargaining agreement or, where allowed, file a civil lawsuit.



