

**TITLE IX SEXUAL HARASSMENT PROCEDURES AND
GRIEVANCE PROCESS FOR FORMAL COMPLAINTS**

The Title IX sexual harassment procedures and grievance process for formal complaints prescribed in this attachment apply only when a report includes allegations of sexual harassment subject to Title IX regulations. (34 CFR 106.44, 106.45)

All other reports or complaints of discrimination or retaliation shall follow the complaint procedures established in Policy 103 Attachment 2 regarding discrimination.

[Note: a live hearing process is not required for the grievance process for formal complaints in the K-12 setting. Language on a live hearing process is not included in these procedures, but the district may add language in consultation with the school solicitor.]

Definitions

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the district's Title IX Coordinator or any district official who has the authority to institute corrective measures on behalf of the district, or to any employee of an elementary and secondary school, other than the respondent.

Exculpatory evidence means evidence tending to exonerate the accused or helps to establish their innocence.

Inculpatory evidence means evidence tending to incriminate the accused or indicate their guilt.

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging Title IX sexual harassment and requesting that the district investigate the allegation. The authority for the Title IX Coordinator to sign a formal complaint does not make the Title IX Coordinator the complainant or other party during the grievance process. The phrase "**document filed by a complainant**" refers to a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

Retaliation shall mean actions including, but not limited to, intimidation, threats, coercion, or discrimination against a victim or other person because they report conduct that may constitute discrimination or harassment, including Title IX sexual harassment, in accordance with Board policy and procedures, participate in an investigation or other process addressing discrimination or Title IX sexual harassment, or act in opposition to discriminatory practices.

The following actions shall not constitute retaliation:

1. An individual exercising free speech under the rights protected by the First Amendment.

2. The assignment of consequences consistent with Board policy when an individual knowingly makes a materially false statement in bad faith in an investigation. The fact that the charges of discrimination were unfounded or unsubstantiated shall not be the sole reason to conclude that any party made a materially false statement in bad faith.

Supportive measures mean nondisciplinary, nonpunitive 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.

Supportive measures shall be designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or to deter sexual harassment. Supportive measures may include, but are not limited to:

1. Counseling or Employee Assistance Program.
2. Extensions of deadlines or other course-related adjustments.
3. Modifications of work or class schedules.
4. Campus escort services.
5. Mutual restrictions on contact between the parties.
6. Changes in work locations.
7. Leaves of absence.
8. Increased security.
9. Monitoring of certain areas of the campus.
10. Assistance from domestic violence or rape crisis programs.
11. Assistance from community health resources including counseling resources.

Title IX sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. A district employee conditioning the provision of an aid, benefit, or district service on an individual's participation in unwelcome sexual conduct, commonly referred to as *quid pro quo sexual harassment*.

2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to a district education program or activity.
3. Sexual assault, dating violence, domestic violence or stalking.
 - a. **Dating Violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship is determined by the following factors:
 - 1) Length of relationship.
 - 2) Type of relationship.
 - 3) Frequency of interaction between the persons involved in the relationship.
 - b. **Domestic violence** includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving federal funding, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
 - c. **Sexual assault** means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
 - d. **Stalking**, under Title IX means stalking on the basis of sex, for example when the stalker desires to date a victim. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to either:
 - 1) Fear for their safety or the safety of others.
 - 2) Suffer substantial emotional distress.

Such conduct must have taken place during a district education program or activity and against a person in the United States to qualify as sexual harassment subject to Title IX regulations. An **education program or activity** includes the locations, events or circumstances over which the district exercises substantial control over both the respondent and the context in which the harassment occurs.

TITLE IX SEXUAL HARASSMENT PROCEDURES

General Response – (with or without a formal complaint)

Any person, whether the alleged victim or not, may report Title IX sexual harassment using the Discrimination/Sexual Harassment/Retaliation Report Form or by making a general report verbally or in writing to the building principal or building administrator, or by using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Upon receipt of a report, school staff shall immediately notify the building principal or building administrator.

A report may be made at any time, including during nonbusiness hours. Verbal reports shall be documented by the Title IX Coordinator or employee receiving the report using the Discrimination/Sexual Harassment/Retaliation Report Form, and these procedures shall be implemented appropriately.

District staff who become aware of harassment or other discrimination affecting a staff member shall promptly report it to the building principal or building administrator.

If a student is identified as a party in the report, parents/guardians have the right to act on behalf of the student at any time.

When the district has actual knowledge of Title IX sexual harassment, the district is required to respond promptly and in a manner that is not deliberately indifferent, meaning not clearly unreasonable in light of the known circumstances.

All sexual harassment reports and complaints received by the building principal or building administrator shall be promptly directed to the Title IX Coordinator, in accordance with Board policy. The Title IX Coordinator shall use the Discrimination/Sexual Harassment/Retaliation Report Form to gather additional information from the reporter and/or other parties identified in the report, to determine if the allegations meet the definition and parameters for Title IX sexual harassment.

The Title IX Coordinator shall promptly contact the complainant regarding the report to gather additional information as necessary, and to discuss the availability of supportive measures. The Title IX Coordinator shall consider the complainant's wishes with respect to supportive measures.

The Title IX Coordinator shall initially assess whether the reported conduct:

1. Meets the definition of Title IX sexual harassment.
2. Occurred in a district program or activity under the control of the district and against a person in the United States.

3. Involves other Board policies or the Code of Student Conduct.
4. Indicates, based on an individualized safety and risk analysis, that there is an immediate threat to the physical health or safety of an individual.
5. Involves a student identified as a student with a disability under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act. (Pol. 103.1, 113)

If the result of this initial assessment determines that none of the allegations fall within the scope of Title IX sexual harassment, but the matter merits review and possible action under other Board policies, the Code of Student Conduct or Attachment 2 addressing Discrimination Complaints, then the Title IX Coordinator shall redirect the report to the appropriate administrator to address the allegations. (Pol. 103, 103.1, 113.1, 218, 317, 317.1)

If the result of the initial assessment determines that the allegations may constitute Title IX sexual harassment, the Title IX Coordinator shall promptly explain to the complainant the process for filing a formal complaint and inform the complainant of the continued availability of supportive measures with or without the filing of a formal complaint.

The Title IX Coordinator shall also determine what supportive measures may be offered to the respondent.

If any party is an identified student with a disability, or thought to be disabled, the Title IX Coordinator shall contact the Director of Special Education to coordinate the required actions in accordance with Board policy. (Pol. 113, 113.1, 113.2, 113.3)

Confidentiality regarding the supportive measures offered and the identity of the following individuals shall be maintained, except as may be permitted by law or regulations relating to the conduct of any investigation: (20 U.S.C. Sec. 1232g; 34 CFR Parts 99, 106; Pol. 113.4, 216, 324)

1. Individuals making a report or formal complaint.
2. Complainant(s).
3. Respondent(s).
4. Witnesses.

The district shall treat complainants and respondents equitably by:

1. Offering supportive measures to the complainant and may offer such measures to the respondent.
2. Following the grievance process for formal complaints before imposing disciplinary sanctions or other actions that are not supportive measures on the respondent.

Supportive Measures -

All supportive measures provided by the district shall remain confidential, to the extent that maintaining such confidentiality would not impair the ability of the district to provide the supportive measures. (34 CFR 106.44)

When a party is an identified student with a disability, or thought to be a student with a disability, the Title IX Coordinator shall notify the Director of Special Education and coordinate to determine whether additional steps must be taken as supportive measures for the party while the Title IX procedures are implemented. Such measures may include, but are not limited to, conducting a manifestation determination, functional behavioral assessment (FBA) or other assessment or evaluation, in accordance with applicable law, regulations or Board policy. FBAs must be conducted when a student's behavior interferes with the student's learning or the learning of others and information is necessary to provide appropriate educational programming, and when a student's behavior violates the Code of Student Conduct and is determined to be a manifestation of a student's disability. (Pol. 113, 113.1, 113.2, 113.3)

Reasonable Accommodations –

Throughout the Title IX sexual harassment procedures, the district shall make reasonable accommodations for identified physical and intellectual impairments that constitute disabilities for any party, consistent with the requirements of federal and state laws and regulations and Board policy. (Pol. 103.1, 104, 113, 832, 906)

Employee Disciplinary Procedures When Reports Allege Title IX Sexual Harassment -

When reports allege Title IX sexual harassment, disciplinary sanctions may not be imposed until the completion of the grievance process for formal complaints. The district shall presume that the respondent is not responsible for the alleged conduct until a determination has been made at the completion of the grievance process for formal complaints.

Administrative Leave –

When an employee, based on an individualized safety and risk analysis, poses an immediate threat to the health or safety of any student or other individual, the employee may be removed on an emergency basis.

An accused, nonstudent district employee may be placed on administrative leave during the pendency of the grievance process for formal complaints, consistent with all rights under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, and in accordance with state law and regulations, Board policy and an applicable collective bargaining agreement or individual contract.

Required Reporting Under Other Policies -

In addition to implementing the Title IX sexual harassment procedures, the Title IX Coordinator shall ensure that reported conduct which meets the definition of other laws, regulations or Board policies, is also appropriately addressed in accordance with the applicable laws, regulations or Board policies, including but not limited to, incidents under the Safe Schools Act, reports of educator misconduct, threats, or reports of suspected child abuse. (Pol. 317.1, 805.1, 806, 824)

Timeframes

Reasonably prompt timeframes shall be established for the conclusion of the grievance process for formal complaints, including timeframes for the informal resolution process and timeframes for filing and resolving appeals.

The established timeframes included in these procedures may be adjusted to allow for a temporary delay or a limited extension of time for good cause. Written notice of the delay or extension and the reason for such action shall be provided to the complainant and the respondent, and documented with the records of the complaint. Good cause may include, but is not limited to, considerations such as:

1. The absence of a party, a party's advisor or a witness.
2. Concurrent law enforcement activity.
3. Need for language assistance or accommodation of disabilities.

Redirection or Dismissal of Title IX Formal Complaints

Formal complaints may be dismissed, if at any time during the investigation or written determination steps described below:

1. A complainant provides written notification of withdrawal of any allegations or of the formal complaint.
2. The respondent is no longer enrolled or employed by the district in a district program or activity.
3. Specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.

Only alleged conduct that occurred in the district's education program or activity, and against a person in the United States, may qualify as Title IX sexual harassment within the district's jurisdiction. If it is determined during the investigation or written determination steps below that none of the allegations, if true, would meet the definition and parameters of Title IX sexual harassment within the district's jurisdiction, the Title IX Coordinator shall dismiss the formal complaint under Title IX. If the matter merits review and possible action under other Board

policies, the Code of Student Conduct or Attachment 2 addressing Discrimination Complaints, then the Title IX Coordinator shall redirect the report to the appropriate administrator to address the allegations.

Written notification shall be promptly issued to the parties simultaneously of any allegations found not to qualify or that are dismissed in compliance with Title IX. Written notification shall state whether the allegations will continue to be addressed pursuant to other Board policies, the Code of Student Conduct or Attachment 2 addressing Discrimination Complaints.

A dismissal may be appealed via the appeal procedures set forth in this Attachment.

Consolidation of Title IX Formal Complaints

The district may consolidate formal complaints against more than one (1) respondent, or by more than one (1) complainant against one or more respondents, or by one (1) individual against another individual, where the allegations of sexual harassment arise out of the same facts or circumstances.

GRIEVANCE PROCESS FOR FORMAL COMPLAINTS

Step 1 – Formal Complaint

The district is required to initiate the grievance process for formal complaints when a complainant files a formal complaint. The Title IX Coordinator is also authorized to initiate this process despite a complainant's wishes when actions limited to supportive measures are not a sufficient response to alleged behavior, or when a formal complaint process is necessary to investigate and address the situation adequately. For example, if disciplinary action would be warranted if allegations are true, if the respondent is a supervisor, or if further investigation is needed to assess the extent of the behavior and impact on others, it may be clearly unreasonable not to initiate the formal complaint process. Only the Title IX Coordinator is authorized to initiate the formal complaint process despite a complainant's wishes, but the Title IX Coordinator may consult with the school solicitor and other district officials in making this decision.

The complainant or the Title IX Coordinator shall use the designated section of the Discrimination/Sexual Harassment/Retaliation Report Form to file or sign a formal complaint.

The Title IX Coordinator shall assess whether the investigation should be conducted by the building principal, another district employee, the Title IX Coordinator or an attorney and shall promptly assign the investigation to that individual.

The Title IX Coordinator, investigator, decision-maker, or any individual designated to facilitate the informal resolution process, each must have completed the required training for such roles as designated in Board policy and shall not have a conflict of interest or bias for or against an individual complainant or respondent, or for or against complainants or respondents in general.

The respondent shall be presumed not responsible for the alleged conduct until a written determination regarding responsibility has been made at the conclusion of the grievance process for formal complaints.

Notice Requirements -

Upon receipt of a formal complaint, or when the Title IX Coordinator signs a formal complaint to initiate the grievance process for formal complaints, the Title IX Coordinator shall provide written notice to all known parties, and the parents/guardians of known parties, if applicable, providing the following information:

1. Notice of the district's grievance process for formal complaints and any informal resolution process that may be available.
2. Notice of the allegations potentially constituting Title IX sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
 - a. The identity of the parties involved, if known.
 - b. The conduct allegedly constituting sexual harassment.
 - c. The date and location of the alleged incident(s), if known.
3. A statement that a written determination regarding responsibility shall be made at the conclusion of the grievance process for formal complaints and, until that time, the respondent is presumed not responsible for the alleged conduct.
4. Notice that parties may have an advisor of their choice, who may be, but is not required to be, an attorney. The advisor may inspect and review evidence.
5. Notice that Board policy and the district's Code of Student Conduct prohibits knowingly making false statements or knowingly submitting false information to school officials in connection with reports of misconduct or discrimination complaints.
6. Notice to all known parties of any additional allegations that the district decides to investigate during the course of the investigation.

Step 2 – Informal Resolution Process

[Note: The informal resolution process cannot be offered or used to facilitate a resolution for any formal complaint where the allegations state that an employee sexually harassed a student.]

At any time after a formal complaint has been filed, but prior to reaching a determination of responsibility, if the Title IX Coordinator believes the circumstances are appropriate, the Title IX Coordinator may offer the parties the opportunity to participate in an informal resolution process, which does not involve a full investigation and adjudication of the Title IX sexual harassment complaint.

The district may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal Title IX sexual harassment complaints. Similarly, a district may not require the parties to participate in an informal resolution process.

Informal resolutions can take many forms, depending on the particular case. Examples include, but are not limited to, mediation, facilitated discussions between the parties, acknowledgment of responsibility by a respondent, apologies, a requirement to engage in specific services such as an Employee Assistance Program, or supportive measures.

When offering an informal resolution process, the Title IX Coordinator shall:

1. Provide the parties a written notice disclosing the following:
 - a. The allegations.
 - b. The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process for formal complaints.
 - c. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
2. Obtain the parties' voluntary, written consent to the informal resolution process. As part of the consent process, all parties shall be informed of the rights being waived by agreeing to the informal resolution process, and shall acknowledge such agreement in writing.
3. The informal resolution process shall be conducted within
 - { } five (5) school days
 - { } ten (10) school days

{ } twenty (20) school days

{ } _____ school days

of the parties' signed agreement for the informal resolution process.

If the matter is resolved to the satisfaction of the parties, the district employee facilitating the informal resolution process shall document the nature of the complaint and the proposed resolution of the matter, have both parties sign the documentation and receive a copy, and forward it to the Title IX Coordinator. Within

{ } ten (10) school days

{ } twenty (20) school days

{ } _____ school days

after the complaint is resolved in this manner, the Title IX Coordinator shall contact the complainant to determine if the resolution was effective and to monitor the agreed upon remedies. The Title IX Coordinator shall document the informal resolution process, responses from all parties, and an explanation of why the district's response was not deliberately indifferent to the reported complaint of sexual harassment.

***If Step 2 Informal Resolution Process results in the final resolution of the complaint, the following steps are not applicable.**

Step 3 – Investigation

The designated investigator, if other than the Title IX Coordinator, shall work with the Title IX Coordinator to assess the scope of the investigation, who needs to be interviewed and what records or evidence may be relevant to the investigation. The investigation stage shall be concluded within

{ } twenty (20) school days.

{ } thirty (30) school days.

{ } _____ school days.

When investigating a formal complaint, the investigator shall:

1. Bear the burden of proof and gather evidence and conduct interviews sufficient to reach a written determination. During the process of gathering evidence, unless the district obtains the voluntary, written consent of the party, or the party's parent/guardian when legally required, the district cannot access, consider, disclose or otherwise use a party's records

which are protected by legal privilege, such as those records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with providing treatment to the party. (For students - Pol. 113.4, 207, 209, 216; Safe2Say Something Procedures)

2. Objectively evaluate all available evidence, including inculpatory and exculpatory evidence.
3. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
4. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

{ } However the district may request a nondisclosure agreement be signed by the parties and their advisor(s), if any, stating that they will not disseminate or disclose evidence and documents exchanged in the investigation.

5. Provide the parties with the same opportunities to have others present during any interview or other meeting, including an advisor of the party's choice. The district may establish restrictions, applicable to both parties, regarding the extent to which the advisor may participate.
6. Provide written notice to any party whose participation is invited or expected during the investigation process with the following information, in sufficient time for the party to prepare to participate:
 - a. Date.
 - b. Time.
 - c. Location.
 - d. Participants.
 - e. Purpose of all investigative interviews or other meetings.
7. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations, including evidence the district does not intend to rely on to reach a determination regarding responsibility and any inculpatory and exculpatory evidence, whether obtained from a party or other source.

If at any point the investigation expands to include additional allegations that were not included in the initial notice provided upon initiation of the grievance process for formal complaints, the investigator shall alert the Title IX Coordinator. The Title IX Coordinator shall provide written notice of the new allegations to the known parties.

Prior to the completion of the investigative report, the investigator shall:

1. Send to each party and the party's advisor, if any, the evidence subject to inspection and review in electronic or hard copy format.
2. Provide the parties at least ten (10) school days following receipt of the evidence to submit a written response.
3. Consider the written response prior to drafting the investigative report.

The investigator shall draft an investigative report that fairly summarizes relevant evidence and shall provide the investigative report to all parties and to the designated decision-maker.

If the investigation reveals that the conduct being investigated may involve a violation of criminal law, the investigator shall promptly notify the Title IX Coordinator, who shall promptly inform law enforcement authorities about the allegations and make any additional required reports, in accordance with law, regulations and Board policy. (Pol. 218, 317.1, 805.1, 806)

The obligation to conduct this investigation shall not be negated by the fact that a criminal or child protective services investigation of the allegations is pending or has been concluded. The investigator should coordinate with any other ongoing investigations of the allegations, including agreeing to request for a delay in fulfilling the district's investigative responsibilities during the fact-finding portion of a criminal or child protective services investigation. Such delays shall not extend beyond the time necessary to prevent interference with or disruption of the criminal or child protective services investigation and the reason for such delay shall be documented by the investigator.

In the course of an investigation, it is possible that conduct other than, or in addition to, Title IX sexual harassment may be identified as part of the same incident or set of circumstances. The fact that there may be Title IX sexual harassment involved does not preclude the district from addressing other identified violations of Board policy or the Code of Student Conduct. If such other conduct is being investigated and addressed together with Title IX sexual harassment as part of the Title IX grievance process for formal complaints, disciplinary action normally should not be imposed until the completion of the Title IX grievance process for formal complaints; however, an employee may be placed on administrative leave in accordance with the provisions of this Attachment. A decision whether and when to take disciplinary action should be made in consultation with the school solicitor.

Step 4 – Written Determination and District Action

Designation of Decision-Maker -

To avoid any conflict of interest or bias, the decision-maker cannot be the same person as the Title IX Coordinator or the investigator. The responsibility as the decision-maker for complaints of Title IX sexual harassment shall generally be designated to the

- { } building principal.
- { } Superintendent.
- { } Director of Student Services.
- { } _____ Other.

If the _____ has a conflict of interest or is a party in the formal complaint process, they shall disclose the conflict and the Title IX Coordinator shall designate another individual to serve as the decision-maker.

Written Determination Submissions -

A written determination of responsibility (written determination) must not be finalized less than ten (10) days after the investigator completes the investigative report and provides it to all parties. Before the decision-maker reaches a determination regarding responsibility, the decision-maker shall afford each party the opportunity to submit written, relevant questions that a party wants to be asked of any party or witness, shall provide each party with the answers, and shall allow for additional, limited follow-up questions from each party.

Relevant questions for a party or witness must be submitted by each party within

- { } three (3) school days
- { } five (5) school days
- { } _____ school days

following receipt of the investigative report. Follow-up questions must be submitted by each party within

- { } three (3) school days
- { } five (5) school days

{ } _____ school days

of being provided the answers to the initial questions.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant as part of the follow-up questions and responses, unless such questions and evidence about the complainant's prior sexual behavior 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.

The decision-maker shall explain to the party proposing the questions about any decision to exclude a question as not relevant.

Written Determination -

The decision-maker must issue a written determination for the conduct alleged in formal complaints. To reach this determination, the decision-maker shall apply the preponderance of the evidence standard, meaning that the party bearing the burden of proof must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not.

{ } *[Note: Districts may consult with their school solicitor and decide to use the "clear and convincing evidence" standard, as permitted by the federal regulations, in place of the "preponderance of the evidence" standard. However, the legal disadvantages of this should be carefully considered with the school solicitor.]* the clear and convincing evidence standard, meaning that the party bearing the burden of proof must show that the truth of the allegations is highly probable.

In considering evidence, the decision-maker shall ensure credibility determinations are not based on an individual's status as a complainant, respondent or witness.

After considering all relevant evidence, the decision-maker shall issue a written determination that includes:

1. Identification of the allegations potentially constituting Title IX sexual harassment.
2. A description of the procedural steps taken from the receipt or signing of the formal complaint through the written determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence.
3. Findings of fact supporting the determination.
4. Conclusions regarding the application of the district's Board policies or Code of Student Conduct to the facts.

5. A statement of, and rationale for, the result as to each allegation, including:
 - a. Determination regarding responsibility.
 - b. Disciplinary sanctions.
 - c. Remedies designed to restore or preserve equal access to the district's education program or activity that will be provided by the district to the complainant. Such remedies may be punitive or disciplinary and need not avoid burdening the respondent.
6. The procedures, deadline and permissible bases for the complainant and respondent to appeal.

The written determination shall be provided to the parties simultaneously. The determination becomes final either:

1. On the date that the district provides the parties with the written decision of the result of the appeal, if an appeal is filed;
2. Or, if an appeal is not filed, on the date on which an appeal would no longer be considered timely, in accordance with the timeframe established for appeals in this Attachment.

The Title IX Coordinator shall be responsible to ensure that any remedies are implemented by the appropriate district officials and for following up as needed to assess the effectiveness of such remedies. Disciplinary actions shall be consistent with Board policies and administrative regulations, the Code of Student Conduct, district procedures, applicable collective bargaining agreements, and state and federal laws and regulations, including specific requirements and provisions for students with disabilities. (Pol. 113.1, 218, 233, 317, 317.1)

Appeal Process

Districts must offer both parties the right to appeal a determination of responsibility and the right to appeal the district's dismissal of a Title IX formal complaint or any allegation in the Title IX formal complaint. The scope of appeals related to Title IX sexual harassment are limited to the following reasons for appeal as stated in the Title IX regulations:

1. A procedural irregularity that affected the outcome of the matter.
2. New evidence that that could affect the outcome was not reasonably available at the time the decision to dismiss or determination of responsibility was made.
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against the individual complainant or respondent or for or against complainants or respondents generally that affected the outcome of the matter.

Written notice of a party's appeal shall be submitted to the Title IX Coordinator within

five (5) school days

ten (10) school days

_____ school days

after the date of the written determination. Notice of appeal shall include a brief statement describing the basis for the appeal.

The Title IX Coordinator shall ensure that the designated appeal authority is not the same person as the decision-maker that reached the determination, the investigator, or the Title IX Coordinator. The designated appeal authority shall be the:

District solicitor or outside counsel.

Outside hearing officer.

_____ (Other).

For all appeals, the designated appeal authority shall:

1. Provide written notice to the other party when notice of an appeal is filed and implement appeal procedures equally for both parties.
2. Provide both parties a reasonable, equal opportunity to submit a written statement in support of or challenging the stated basis for the appeal. Supporting statements shall describe in detail as applicable the procedural irregularities asserted to have affected the outcome of the determination, the nature of any new evidence asserted to have affected the outcome, and the nature of any bias asserted to have affected the outcome, with an explanation of how the outcome was affected by such factors. If evidence exists supporting the basis for appeal, it shall accompany the supporting statement, or it shall identify where such evidence may be found.

Supporting statements must be submitted to the appeal authority and provided to the other party within

five (5) school days

ten (10) school days

_____ school days

of the written notice of appeal.

Statements in opposition to the appeal shall be submitted within five (5) school days of the submission of supporting statements. If a statement in opposition to an appeal refers to any evidence beyond what is described in a supporting statement, it shall accompany the statement in opposition, or it shall identify where such evidence may be found.

The appeal authority may accept and consider evidence in support of or in opposition to an appeal in making any conclusions necessary to deciding the appeal. Alternatively, when the appeal authority determines that factors exist making it necessary for the decision-maker to further develop the evidentiary record relevant to the basis for appeal, the appeal authority may return the matter to the decision-maker for that limited purpose.

3. Determine whether the appeal meets the grounds for permitted reasons for appeal and justifies modifying the written determination.
4. Issue a written decision setting forth the respects, if any, in which the written determination is modified and the rationale for the result within

 { } five (5) school days.

 { } ten (10) school days.

 { } twenty (20) school days.

 { } _____ school days.
5. Provide the written decision simultaneously to both parties. A copy of the written decision shall also be provided to the Title IX Coordinator.

Recordkeeping

The district shall maintain the following records for a period of a minimum of seven (7) years after conclusion of procedures and implementation of disciplinary sanctions and/or remedies, or in the case of a complainant or respondent who is a minor, until the expiration of the longest statute of limitations for filing a civil suit applicable to any allegation:

1. Each Title IX sexual harassment investigation, including any written determination and any audio or audiovisual recording or transcript, and disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the district's education program or activity.
2. Any appeal and the result.
3. Any informal resolution and the result.

4. All materials used to train the Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process.
5. Records of any district actions, including any supportive measures, taken in response to a report or formal complaint of Title IX sexual harassment. In each instance, the district shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the district's education program or activity. If a district does not provide a complainant with supportive measures, then the district must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the district in the future from providing additional explanations or detailing additional measures taken.

**DISCRIMINATION/SEXUAL HARASSMENT/RETALIATION
REPORT FORM**

The Board declares it to be the policy of this district to provide a safe, positive learning and working environment that is free from sexual harassment, other discrimination and retaliation. If you have experienced, or if you have knowledge of, any such actions, we encourage you to complete this form. The Title IX Coordinator will be happy to support you by answering any questions about the report form, reviewing the report form for completion and assisting as necessary with completion of the report. The Title IX Coordinator's contact information is:

Position:

Address:

Email:

Phone Number:

Retaliation Prohibited

The district, its employees and others are prohibited from intimidating, threatening, coercing, or discriminating against you for making this report. Please contact the Title IX Coordinator immediately if you believe retaliation has occurred.

Confidentiality

Confidentiality of all parties, witnesses, the allegations and the filing of a report shall be handled in accordance with Board policy, procedures, and the district's legal and investigative obligations. The school will take all reasonable steps to investigate and respond to the report, consistent with a request for confidentiality as long as doing so does not preclude the school from responding effectively to the report. If you have any questions regarding how the information contained in this report may be used, please discuss them with the Title IX Coordinator prior to filing the report. Once this report is filed, the district has an obligation to investigate the information provided.

Note: For purposes of Title IX sexual harassment, this Report Form serves initially as an informal report, not a formal complaint of Sexual Harassment under Title IX.

I. Information About the Person Making This Report:

Name: _____

Address: _____

Phone Number: _____

Assigned School Building(s):

I am a:

- Employee Volunteer Visitor
- Other _____ (please explain relationship to the district)

If you are not the victim of the reported conduct, please identify the alleged victim:

Name: _____

The alleged victim is:

- Another Employee Student
- Other: _____ (please explain relationship to the alleged victim)

II. Information About the Person(s) You Believe is/are Responsible for the Harassment, Retaliation or Other Discrimination You are Reporting

What is/are the name(s) of the individual(s) you believe is/are responsible for the conduct you are reporting?

Name(s):

The reported individual(s) is/are:

- Student(s) Employee(s)
- Other _____ (please explain relationship to the district)

III. Description of the Conduct You are Reporting

In your own words, please do your best to describe the conduct you are reporting as clearly as possible. Please attach additional pages if necessary:

When did the reported conduct occur? (Please provide the specific date(s) and time(s) if possible):

Where did the reported conduct take place?

Please provide the name(s) of any person(s) who was/were present, even if for only part of the time.

Please provide the name(s) of any other person(s) that may have knowledge or related information surrounding the reported conduct.

Have you reported this conduct to any other individual prior to giving this report?

Yes No

If yes, who did you tell about it?

If you are the victim of the reported conduct, how has this affected you?

I certify that the information I have provided in this complaint is true, correct and complete to the best of my knowledge. I understand that any false information provided herein is subject to penalties contained in 18 Pa. C.S.A. Sec. 4904, relating to unsworn falsification to authorities.

Signature of Person Making the Report

Date

Received By

Date

FOR OFFICIAL USE ONLY

This section is to be completed by the Title IX Coordinator based on reviewing the report with the complainant or other individual making the report.

The purpose of this form is to assist the Title IX Coordinator in gathering information necessary to properly assess the circumstances surrounding the reported conduct to determine if the allegations fall under the definition of Title IX sexual harassment or if the matter merits review and action under other Board policies. The Title IX Coordinator shall gather as much information as possible in cases of incomplete or anonymous reports (including those that may be received through the Safe2Say Something program) to assess the report.

Upon receipt of the report, The Title IX Coordinator shall promptly contact the complainant regarding the report to gather additional information as necessary, and to discuss the availability of supportive measures as described in Policy 104 and Attachment 3. The Title IX Coordinator shall consider the complainant's wishes with respect to supportive measures.

I. Reporter Information:

Name: _____

Address: _____

Phone Number: _____

Assigned School Building(s):

Reporter is a:

- Employee Volunteer Visitor
- Other _____ (please explain relationship to the district)

If the reporter is not the victim of the reported conduct, please identify the alleged victim:

Name: _____

The alleged victim is:

- Another Employee Student
- Other: _____ (please explain relationship to the alleged victim)

II. Respondent Information

Please provide the name(s) of the individual(s) believed to have conducted the reported violation:

Name(s):

The reported respondent(s) is/are:

- Student(s) Employee(s)
- Other _____ (please explain relationship to the district)

III. Level of Report:

- Informal Formal (see additional information below on Title IX formal complaints)

IV. Type of Report:

- Title IX Sexual Harassment Discrimination Retaliation Other _____

Nature of the Report (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> Race | <input type="checkbox"/> Age |
| <input type="checkbox"/> Color | <input type="checkbox"/> Creed |
| <input type="checkbox"/> Religion | <input type="checkbox"/> Sex |
| <input type="checkbox"/> Sexual Orientation | <input type="checkbox"/> Sexual Harassment |
| <input type="checkbox"/> National Origin | <input type="checkbox"/> Ancestry |
| <input type="checkbox"/> Marital Status | <input type="checkbox"/> Pregnancy |
| <input type="checkbox"/> Handicap/Disability | <input type="checkbox"/> Genetic Information |

V. Reported Conduct

Describe the reported conduct below, including specific actions, dates, times, locations and any other details necessary to properly assess the reported incident(s).

How often did the conduct occur?

Is it being repeated? Yes No

Do the circumstances involve a student identified as a student with a disability under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act?

No.

Yes, please identify the student with a disability and contact the Director of Special Education.

Date Director of Special Education was contacted: _____

How has the conduct affected the alleged victim's ability to fully participate in the school's programs or activities in the course of school employment?

What is the alleged victim's relationship with the alleged respondent?

Insert names, descriptions, and/or contact information of individuals believed to have observed the conduct or who otherwise may have knowledge of the conduct and/or related circumstances.

Additional observations or evidence including pictures, texts, emails, video or other information submitted to the Title IX Coordinator.

VI. Safety Concerns

Are there safety concerns that may require Emergency Removal or Administrative Leave of a respondent? (This requires an individualized safety and risk analysis as to whether there is an immediate threat to the physical health or safety of an individual.)

No.

Yes, please describe:

VII. Other Reports

Has the conduct been reported to the police or any other agency?

No

Yes Date reported: _____ Agency: _____

VIII. Identification of Policies Implicated by Reported Conduct

Check all that apply:

Policy 103. Discrimination/Title IX Sexual Harassment Affecting Students

Policy 104. Discrimination/Title IX Sexual Harassment Affecting Staff

Other _____

To meet the definition of Title IX sexual harassment, the conduct must have taken place during a district education program or activity involving a person in the United States. An **education program or activity** includes the locations, events or circumstances over which the district exercises substantial control over both the respondent and the context in which the sexual harassment occurs. Title IX applies to all of a district's education programs or activities, whether such programs or activities occur on-campus or off-campus.

Did the incident occur during a school program or activity involving a person in the United States?

Yes

No

To meet the definition of Title IX sexual harassment, the conduct needs to satisfy one or more of the following (please check all that apply):

A district employee conditioning the provision of an aid, benefit, or district service on an individual's participation in unwelcome sexual conduct, commonly referred to as quid pro quo sexual harassment.

Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to a district education program or activity.

Sexual assault, dating violence, domestic violence or stalking.

Dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship is determined by the following factors:

- Length of relationship.
- Type of relationship.
- Frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving federal funding, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Sexual assault means a sexual offense under a state or federal law that is classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

Stalking means stalking on the basis of sex, for example when the stalker desires to date a victim. Stalking means to engage in a course of conduct directed at a specific person that would cause a reasonable person to either:

1. Fear for their safety or the safety of others.
2. Suffer substantial emotional distress.

IX. Recommended Course of Action

After consultation with the complainant and consideration of the reported information, the Title IX Coordinator directs the report to proceed under the provisions of (check all that apply):

- No further action at this time. Reason:
- Policy 104 Discrimination/Title IX Sexual Harassment Affecting Staff: Attachment 2
Discrimination Complaint Procedures
- Policy 104. Discrimination/Title IX Sexual Harassment Affecting Staff: Attachment 3 Title IX
Sexual Harassment Procedures and Grievance Process for Formal Complaints
- Other _____

X. Title IX Information to Complainant

What supportive measures were discussed with the complainant, and what were the complainant's wishes with respect to supportive measures?

Upon designating a course of action under Title IX sexual harassment, the Title IX Coordinator will promptly:

1. Explain to the complainant the process for filing a formal complaint.
2. Inform the complainant of the continued availability of supportive measures with or without the filing of a formal complaint.
3. Determine what supportive measures may be offered to the respondent.
4. Determine whether the complainant wishes this report to be treated as a formal complaint.

XI. Title IX Coordinator Signature

I recommend the above course of action based on my consultation with the complainant and the information available at this time.

Title IX Coordinator: _____

Date: _____

XII. Title IX Formal Complaint Action

The Title IX Coordinator shall have the complainant check the appropriate box and sign and date below to indicate whether or not the complainant wishes to have this form serve as a formal complaint pursuant to Title IX.

I would like my report to be treated as a formal complaint of sexual harassment pursuant to Title IX.

Yes

No

Complainant's Signature: _____

Date: _____

If the complainant does not wish this report to be treated as a formal complaint pursuant to Title IX, the Title IX Coordinator must assess whether actions limited to supportive measures are a sufficient response to alleged behavior, or whether instead a formal complaint process is necessary to investigate and address the situation adequately. For example, if disciplinary action would be warranted if allegations are true, if the respondent is a supervisor, or if further investigation is needed to assess the extent of the behavior and impact on others, it may be clearly unreasonable not to initiate the formal complaint process. The Title IX Coordinator may consult with the school solicitor and other district official in making this decision.

As Title IX Coordinator, I have determined that, notwithstanding the complainant's preference, it is necessary to proceed with the Grievance Process for Formal Complaints for the following reasons:

Therefore, I am signing this form for the purpose of serving as the formal complaint initiating that process:

Title IX Coordinator's Signature: _____

Date: _____

DISCRIMINATION COMPLAINT PROCEDURES

The Discrimination Complaint Procedures prescribed in this Attachment apply to reports of retaliation or discrimination on the basis of race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin, marital status, pregnancy or handicap/disability that do not constitute Title IX sexual harassment as defined in Policy 104.

All reports of discrimination shall be reviewed by the Title IX Coordinator upon receipt to determine if the allegations meet the definition and parameters of sexual harassment under Title IX. If the result of this review determines that the allegations fall within the scope of Title IX sexual harassment, then the process set forth in Policy 104 Attachment 3 for Title IX Sexual Harassment shall be followed.

[Note: if the same individual is assigned to the roles of Title IX Coordinator and Compliance Officer through Policy 104, please revise the terminology in this Attachment 2 to reflect the position of Title IX Coordinator/Compliance Officer throughout.]

All reports of discrimination and retaliation brought pursuant to the district's discrimination policy shall also be reviewed for conduct which may not be proven discriminatory under Policy 104 but merits review and possible action under other Board policies or the Code of Student Conduct for students. (Pol. 103.1, 218,317)

Definitions

Complainant shall mean an individual who is alleged to be the victim.

Respondent shall mean an individual who has been reported to be the perpetrator of the alleged conduct.

Discrimination shall mean to treat individuals differently, or to harass or victimize based on a protected classification including race, color, age, creed, religion, sex, sexual orientation, genetic information, ancestry, national origin, marital status, pregnancy, or handicap/disability.

Harassment is a form of discrimination based on the protected classifications listed in the policy consisting of unwelcome conduct such as graphic, written, electronic, verbal or nonverbal acts including offensive jokes, slurs, epithets and name-calling, ridicule or mockery, insults or

put-downs, offensive objects or pictures, physical assaults or threats, intimidation, or other conduct that may be harmful or humiliating or interfere with a person's school or school-related work performance, including when:

1. Submission to such conduct is made explicitly or implicitly a term or condition of an employee's status; or
2. Submission to or rejection of such conduct is used as the basis for employment-related decisions affecting an employee; or
3. Such conduct is sufficiently severe, persistent or pervasive that a reasonable person in the complainant's position would find that it unreasonably interferes with the complainant's performance at work or otherwise creates an intimidating, hostile, or offensive working environment such that it alters the complainant's working conditions.

Retaliation shall mean actions including, but not limited to, intimidation, threats, coercion, or discrimination against a victim or other person because they report discrimination or harassment, participate in an investigation or other process addressing discrimination or harassment, or act in opposition to discriminatory practices.

Reasonable Accommodations

Throughout the discrimination complaint procedures, the district shall make reasonable accommodations for identified physical and intellectual impairments that constitute disabilities for all parties, consistent with the requirements of federal and state laws and regulations and Board policy.

Required Reporting Under Other Policies

In addition to implementing the disciplinary complaint procedures, the building principal, building administrator or Compliance Officer shall ensure that reported conduct which meets the definition of other laws, regulations or Board policies, is also appropriately addressed in accordance with the applicable laws, regulations or Board policies, including but not limited to, incidents under the Safe Schools Act, reports of educator misconduct, threats, or reports of suspected child abuse.

Timeframes

Reasonably prompt timeframes shall be established for completing each step of the discrimination complaint procedures, including timeframes for filing and resolving appeals.

The established timeframes included in these procedures may be adjusted to allow for a temporary delay or a limited extension of time for good cause. Written notice of the delay or extension and the reason for such action shall be provided to the complainant and the respondent,

and documented with the records of the complaint. Good cause may include, but is not limited to, considerations such as:

1. The absence of a party or a witness.
2. Concurrent law enforcement activity.
3. Need for language assistance or accommodation of disabilities.

PROCEDURES FOR COMPLAINTS OF DISCRIMINATION

Step 1 – Reporting

An employee or individual who believes they have been subject to discrimination by any district student, employee or third party is encouraged to immediately report the incident to the building principal using the Discrimination/Sexual Harassment/Retaliation Report Form or by making a general report verbally or in writing to the building principal or building administrator. A person who is not an intended victim or target of discrimination but is adversely affected by the offensive conduct may file a report of discrimination.

If a student is identified as a party in the report, parents/guardians have the right to act on behalf of the student at any time.

Any person with knowledge of discrimination in violation of Board policy or this procedure is encouraged to immediately report the matter to the building principal or building administrator.

The building principal or building administrator shall immediately notify the Title IX Coordinator and Compliance Officer of the reported discrimination.

If the building principal or building administrator is the subject of a complaint, the person making the report shall report the incident directly to the Title IX Coordinator and/or Compliance Officer.

The complainant or reporting individual shall be encouraged to use the Discrimination/Sexual Harassment/Retaliation Report Form, however, complaints shall be accepted in person, by telephone, by mail or email, or by any other means that results in the appropriate individual receiving the individual's verbal or written report. Verbal reports shall be documented using the Discrimination/Sexual Harassment/Retaliation Report Form, and these procedures shall be implemented.

The Title IX Coordinator shall review reports and complaints, and may gather additional information from the individual submitting the report and other parties identified in the report using the Discrimination/Sexual Harassment/Retaliation Report Form. The Title IX Coordinator

shall promptly contact the complainant regarding the report to gather additional information as necessary, and to discuss the availability of supportive measures. The Title IX Coordinator shall consider the complainant's wishes with respect to supportive measures.

The Title IX Coordinator shall conduct an assessment to determine whether the reported circumstances are most appropriately addressed through the Discrimination Complaint Procedures prescribed in this Attachment 2, or if the reported circumstances meet the definition and parameters of Title IX sexual harassment and are most appropriately addressed through the Title IX Sexual Harassment Procedures and Grievance Process for Formal Complaints in Attachment 3, or other applicable Board policies.

If the Title IX Coordinator determines that the report should be addressed through the discrimination complaint procedures, the Compliance Officer shall be notified and the complaint procedures in this Attachment 2 implemented.

When a party is an identified student with a disability, or thought to be a student with a disability, the Title IX Coordinator shall notify the Director of Special Education and coordinate to determine whether additional steps must be taken for the party, while the discrimination complaint procedures are implemented. Such measures may include, but are not limited to, conducting a manifestation determination, functional behavioral assessment (FBA) or other assessment or evaluation, in accordance with applicable law, regulations or Board policy. FBAs must be conducted when a student's behavior interferes with the student's learning or the learning of others and information is necessary to provide appropriate educational programming, and when a student's behavior violates the Code of Student Conduct and is determined to be a manifestation of a student's disability.

Step 2 – Initial Communications/Supports

The complainant shall be informed about the Board's policy on discrimination, including the right to an investigation of both verbal and written reports of discrimination.

The building principal, building administrator or designee, in consultation with the Compliance Officer, Title IX Coordinator and other appropriate individuals, shall promptly implement appropriate measures to protect the complainant and others as necessary from violation of the policy throughout the course of the investigation.

The building principal, building administrator or designee may provide to the complainant factual information on the complaint and the investigative process, the impact of choosing to seek confidentiality and the right to file criminal charges. The person accepting the complaint shall handle the report objectively, neutrally and professionally, setting aside personal biases that might favor or disfavor the complainant or respondent.

The building principal or Compliance Officer shall provide relevant information on resources available in addition to the discrimination complaint procedure, such as making reports to the police, available assistance from domestic violence or rape crisis programs and community health resources, including counseling resources.

Informal Remedies -

At any time after a complaint has been reported, if the Compliance Officer believes the circumstances are appropriate, the Compliance Officer may offer the parties involved in the complaint the opportunity to participate in informal remedies to address the reported conduct. Informal remedies can take many forms, depending on the particular case. Examples include, but are not limited to, mediation, facilitated discussions between the parties, acknowledgment of responsibility by a respondent, apologies, a requirement to engage in specific services such as an Employee Assistance Program, or other measures to support the parties.

If the matter is resolved to the satisfaction of the parties, the district employee facilitating the informal remedies shall document the nature of the complaint and the proposed resolution of the matter, have both parties sign the documentation to indicate agreement with the resolution and receive a copy, and forward it to the Compliance Officer.

The Compliance Officer shall contact the complainant to determine if the resolution was effective and to monitor the agreed upon remedies, and shall document all appropriate actions.

*If the informal remedies result in the final resolution of the complaint, the following steps are not applicable.

Step 3 – Investigation

The Compliance Officer shall assess whether the investigation should be conducted by the building principal, building administrator another district employee, the Compliance Officer or an attorney and shall promptly assign the investigation to that individual.

The Compliance Officer shall ensure that the individual assigned to investigate the complaint has an appropriate understanding of the relevant laws pertaining to discrimination and retaliation issues and Board policy, and how to conduct investigations and draft an investigative report.

The investigator shall work with the Compliance Officer to assess the anticipated scope of the investigation, who needs to be interviewed and what records or evidence may be relevant to the investigation.

The investigator shall conduct an adequate, reliable and impartial investigation. The complainant and the respondent may suggest additional witnesses and provide other evidence during the course of the investigation. When the initial complaint involves allegations relating to conduct which took place away from school property, school-sponsored activities or school conveyances, the investigation may include inquiries related to these allegations to determine whether they resulted in continuing effects such as harassment in school settings.

The investigation may consist of individual interviews with the complainant, the respondent, and others with knowledge relative to the allegations. The investigator may also evaluate any other information and materials relevant to the investigation. The person making the report, parties, parents/guardians, if applicable, and witnesses shall be informed of the prohibition against

retaliation for anyone's participation in the process and that conduct believed to be retaliatory should be reported. All individuals providing statements or other information or participating in the investigation shall be instructed to keep the matter confidential and to report any concerns about confidentiality to the investigator.

If the investigation reveals that the conduct being investigated may involve a violation of criminal law, the investigator shall promptly notify the Compliance Officer, who shall promptly inform law enforcement authorities about the allegations.

The obligation to conduct this investigation shall not be negated by the fact that a criminal or child protective services investigation of the allegations is pending or has been concluded. The investigator should coordinate with any other ongoing investigations of the allegations, including agreeing to requests for a delay in fulfilling the district's investigative responsibilities during the fact-finding portion of a criminal or child protective services investigation. Such delays shall not extend beyond the time necessary to prevent interference with or disruption of the criminal or child protective services investigation, and the reason for such delay shall be documented by the investigator.

Step 4 – Investigative Report

The investigator shall prepare and submit a written report to the Compliance Officer within

{ } twenty (20) school days

{ } thirty (30) school days

{ } _____ school days

of the initial report of alleged discrimination, unless the nature of the allegations, anticipated extent of the investigation or the availability of witnesses requires the investigator and the Compliance Officer to establish a different due date. The parties shall be notified of the anticipated date the investigative report will be completed and of any changes to the anticipated due date during the course of the investigation.

The investigative report shall include a summary of the investigation, a determination of whether the complaint has been substantiated as factual, the information and evaluation that formed the basis for this determination, whether the conduct violated Board Policy 104 and of any other violations of law or Board policy which may warrant further district action, and a recommended disposition of the complaint. An investigation into discrimination or harassment shall consider the record as a whole and the totality of circumstances in determining whether a violation of Board policy has occurred, recognizing that persistent and pervasive conduct, when taken together, may be a violation even when the separate incidents are not severe.

The complainant and the respondent shall be informed of the outcome of the investigation, for example, whether the investigator believes the allegations to be founded or unfounded, within a reasonable time of the submission of the written investigative report, to the extent authorized by

the Family Educational Rights and Privacy Act (FERPA) and other applicable laws. The respondent shall not be notified of the individual remedies offered or provided to the complainant.

Step 5 – District Action

If the investigation results in a finding that some or all of the allegations of the discrimination complaint are founded and constitute a violation of Board policy, the district shall take prompt, corrective action designed to ensure that such conduct ceases and that no retaliation occurs. The district shall promptly take appropriate steps to prevent the recurrence of the prohibited conduct and to address the discriminatory effect the prohibited conduct had on the complainant and the district education program or activity. District staff shall document the corrective action taken and, where not prohibited by law, inform the complainant. The Compliance Officer shall follow up by assessing the effectiveness of the corrective action at reasonable intervals.

If an investigation results in a finding that a different policy was violated separately from or in addition to violations of Policy 104 or these procedures, or that there are circumstances warranting further action, such matters shall be addressed at the conclusion of this investigation or through disciplinary or other appropriate referrals where further evaluation or investigation is necessary.

Disciplinary actions shall be consistent with Board policies and administrative regulations, the Code of Student Conduct for students, district procedures, applicable collective bargaining agreements, and state and federal laws and regulations.

Appeal Procedure

If the complainant or the respondent is not satisfied with a finding made pursuant to these procedures or with recommended corrective action, they may submit a written appeal to the Compliance Officer within fifteen (15) school days of receiving notification of the outcome of the investigation. If the Compliance Officer investigated the complaint, such appeal shall be made to the Superintendent.

The individual receiving the appeal shall review the investigation and the investigative report and may also conduct or designate another person to conduct a reasonable supplemental investigation to assess the sufficiency and propriety of the prior investigation.

The person handling the appeal shall prepare a written response to the appeal within

{ } five (5) school days.

{ } ten (10) school days.

{ } twenty (20) school days.

{ } _____ school days.

Copies of the response shall be provided to the complainant, the respondent and the investigator who conducted the initial investigation.

SEXUAL HARASSMENT INVESTIGATIONS

1. NEW RULES

The United States Department of Education established new Title IX rules governing the obligations of elementary and secondary schools to investigate and remedy sexual harassment. These rules, if they become effective as written, would substantially narrow the definition of sexual harassment—both **student-on-student** and **staff-on-student** or **staff-on-staff**—and would enhance significantly the requirements for investigating complaints of harassment and the procedural rights both accuser and accused. Compliance with these enhanced investigation and procedural rules would render very difficult any effort to sue a school entity for sex discrimination. They will also, however, require a considerable investment of new resources on the part of public schools, which will have to establish elaborate complaint investigation and decision-making processes.

2. NARROWED DEFINITION OF HARASSMENT

The proposed new regulation defines the term “**sexual harassment**” as “**unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to [the school’s] education program or activity.**” This change would elevate the standard for harassment to the level currently required to make out a claim for money damages in court. The **existing standard** that the Office for Civil Rights at USDE has applied in its investigations of discrimination claims—for which corrective action does not include money damages—is far more subjective, **hinging more on how the complainant perceived and responded to the alleged harassment, regardless of how objectively severe and pervasive it was.** Under the existing standard, a finding of harassment could be founded on the unwillingness of the complaining student to attend school based on a single incident of alleged harassment. Under the proposed standard, a single incident that did not involve a criminal assault would not meet the “pervasive” test and, even if *multiple* incidents of harassment were alleged, they would have to be so severe as to be offensive to an objective observer, regardless of the perception of the complaining student. Schools, moreover, would be required to dismiss without investigation any complaint that, if proven true, would not survive this test.

3. INVESTIGATION ENHANCED AND FORMALIZED

The obligation to **investigate, prove, and take action to remedy harassment under the proposed regulation would be triggered only by “actual knowledge”** of conduct deemed harassing. Actual knowledge could come either from the filing of a written, signed complaint by the alleged victim of harassment or from awareness of facts constituting harassment by (a) the designated compliance officer for the LEA; (b) an official who is authorized “to institute corrective measures” on behalf of the LEA; or (c) a teacher. Mere knowledge of harassment by an employee or other staff member who is not in one of these roles would not suffice to impute “actual knowledge” to the school entity.

4. TRIPARTATE INVESTIGATION TEAM

While these changes would, if adopted, lower considerably the number of founded harassment claims, the **procedural requirements** of the proposed regulation will be costly and difficult to implement. Schools will be required to **appoint and train Title IX compliance officers, complaint investigators, and decision makers—and these three positions will have to be filled by different staff members.** Currently, the roles of compliance officer, investigator, and decision maker are often filled by a single individual, typically a building administrator. Required training of these staff members would have to be specific to investigating, deciding, and remedying harassment claims based on sex.

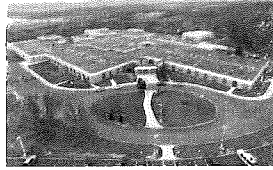
5. PROCEDURAL GUIDELINES

Formal notice of harassment allegations and of the procedural rights would have to be provided **in writing to both accuser and accused, and both parties would have the right to be accompanied by an “advisor”—which presumably could include an attorney—at any face-to-face meeting concerning the complaint.** Although schools would not be required to gather evidence through an evidentiary hearing, both accuser and accused, who must be presumed innocent, **would have the right to submit to the appointed investigator questions that each wants asked of the other, and of any witnesses who are interviewed, and the school would have to provide the answers to those questions to the party that submitted them.** In addition to this potentially problematic requirement, **all evidence uncovered in the investigation would have to be accessible to both accused and accuser, regardless of whether the school intends to use that evidence to support its findings.** The evidence thus gathered must be submitted to a decision-maker who must, based thereon, issue a written decision that includes findings of fact, an analysis of how those facts establish or fail to establish a violation of a specific disciplinary code, and a proposed corrective action. In these and many other particulars, the proposed new investigation and fact-finding requirements would lend themselves more to criminal cases than to the sort of flexible, informal processes more suited to children in the elementary and secondary school context. (It should be noted that the proposed regulations appear to have been drafted with the college and university context more in mind, although they would apply equally to younger children).

6. STANDARD OF LIABILITY

The proposed regulations make clear, however, that **schools would only be liable for Title IX discrimination if they are found to be “deliberately indifferent” to harassment—a standard, again, currently applied only to actions in court seeking money damages.** As long as a school adheres to the stringent requirements for investigating harassment complaints, the new rules would bar any finding by USDE that the school was “deliberately indifferent,” even if USDE investigators ultimately disagree with the conclusion reached by school officials, as long as that conclusion, or the process used to reach it, was not “clearly unreasonable in light of the known circumstances.”

One curious provision of the proposed regulations would allow for the **“emergency removal” of an accused harasser pending completion of an investigation of the complaint.** We believe, however, that any such removal would entitle the accused to disciplinary due process, which, if the removal is proposed for more than ten school days, would include a full school board hearing. The proposed regulation allowing “emergency removal,” moreover, expressly retains in the removed student all rights under the IDEA, Section 504, and the ADA.



Book	Policy Manual
Section	100 Programs
Title	Discrimination/Title IX Sexual Harassment Affecting Staff
Code	104 Vol IV 2020
Status	For JOC Approval 11/16/2020

Authority

The Board declares it to be the policy of this district to provide to all persons equal access to all categories of employment in this district, regardless of race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin, marital status, genetic information, pregnancy or handicap/disability. The district shall make reasonable accommodations for identified physical and mental impairments that constitute disabilities, consistent with the requirements of federal and state laws and regulations. [1][2][3][4][5][6][7][8][9][10][11][12]

The Board also declares it to be the policy of this district to comply with federal law and regulations under Title IX prohibiting sexual harassment, which is a form of unlawful discrimination on the basis of sex. Such discrimination shall be referred to throughout this policy as Title IX sexual harassment. Inquiries regarding the application of Title IX to the district may be referred to the Title IX Coordinator, to the Assistant Secretary for Civil Rights of the U.S. Department of Education, or both.

The Board directs that the foregoing statement of Board policy be included in each student and staff handbook, and that this policy and related attachments be posted to the district's website.

The Board requires a notice stating that the district does not discriminate in any manner, including Title IX sexual harassment, in any district education program or activity, to be issued to all students, parents/guardians, employment applicants, employees and all unions or professional organizations holding collective bargaining or professional agreements with the district. All discrimination notices and information shall include the title, office address, telephone number and email address of the individual(s) designated as the Compliance Officer and Title IX Coordinator.

Reports of Title IX Sexual Harassment and Other Discrimination and Retaliation

The Board encourages employees and third parties who believe they or others have been subject to Title IX sexual harassment, other discrimination or retaliation to promptly report such incidents to the building principal or building administrator. A person who is not an intended victim or target of discrimination but is adversely affected by the offensive conduct may file a report of discrimination.

If the building principal or building administrator is the subject of a complaint, the complainant or the individual making the report shall direct the report of the incident to the Title IX Coordinator.

The complainant or **the individual making the report may use the Discrimination/Sexual Harassment/Retaliation Report Form attached to this policy for purposes of reporting an incident or incidents in writing**; however, **verbal reports of an incident or incidents** shall be accepted, documented and the procedures of this policy and the relevant attachments followed.

The building principal or building administrator shall promptly notify the Title IX Coordinator of all reports of discrimination, Title IX sexual harassment or retaliation. The Title IX Coordinator shall promptly contact the complainant regarding the report to gather additional information as necessary, and to discuss the availability of supportive measures. The Title IX Coordinator shall consider the complainant's wishes with respect to supportive measures.

The Title IX Coordinator shall conduct an assessment to determine whether the reported circumstances are most appropriately addressed through the Discrimination Complaint Procedures prescribed in Attachment 2 to this policy, or if the reported circumstances meet the definition of Title IX sexual harassment and are most appropriately addressed through the Title IX Sexual Harassment Procedures and Grievance Process for Formal Complaints in Attachment 3, or other Board policies.

Disciplinary Procedures when Reports Allege Title IX Sexual Harassment

When a report alleges Title IX sexual harassment, disciplinary sanctions may not be imposed until the completion of the grievance process for formal complaints outlined in Attachment 3. The district shall presume that the respondent is not responsible for the alleged conduct until a determination has been made at the completion of the grievance process for formal complaints.

Administrative Leave –

When an employee, based on an individualized safety and risk analysis, poses an immediate threat to the health or safety of any student or other individual, the employee may be removed on an emergency basis.

An accused, nonstudent district employee may be placed on administrative leave during the pendency of the grievance process for formal complaints, consistent with all rights under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, and in accordance with state law and regulations, Board policy and an applicable collective bargaining agreement or individual contract.

Confidentiality

Confidentiality of all parties, witnesses, the allegations, the filing of a **report**, and the investigation **related to any form of discrimination or retaliation, including Title IX sexual harassment**, shall be handled in accordance with **applicable law, regulations, this policy, the attachments** and the district's legal and investigative obligations. **[13][14][15][16][17]**

Retaliation

The Board prohibits retaliation by **the district** or any other person against any person for: **[16]**

- 1. Reporting or making a formal complaint of any form of discrimination or retaliation, including Title IX sexual harassment.**
- 2. Testifying, assisting, participating or refusing to participate** in a related investigation, **process or other proceeding** or hearing.
- 3. Acting in opposition to** practices the person reasonably believes to be discriminatory.

The district, its employees and others are prohibited from intimidating, threatening, coercing, or discriminating against anyone for actions described above. Individuals are encouraged to contact the Title IX Coordinator immediately if they believe retaliation has occurred.

Definitions

Complainant shall mean an individual who is alleged to be the victim.

Respondent shall mean an individual alleged to be the perpetrator of the discriminatory conduct.

Discrimination

Discrimination shall mean to treat individuals differently, or to harass or victimize based on a protected classification including race, color, age, creed, religion, sex, sexual orientation, genetic information, ancestry, national origin, marital status, pregnancy, or handicap/disability.

Harassment is a form of discrimination based on the protected classifications listed in this policy consisting of unwelcome conduct such as graphic, written, electronic, verbal or nonverbal acts including offensive jokes, slurs, epithets and name-calling, ridicule or mockery, insults or put-downs, offensive objects or pictures, physical assaults or threats, intimidation, or other conduct that may be harmful or humiliating or interfere with a person's school or school-related work performance, including when: [9]

1. Submission to such conduct is made explicitly or implicitly a term or condition of an employee's status; or
2. Submission to or rejection of such conduct is used as the basis for employment-related decisions affecting an employee; or
3. Such conduct is sufficiently severe, persistent or pervasive that a reasonable person in the complainant's position would find that it unreasonably interferes with the complainant's performance at work or otherwise creates an intimidating, hostile, or offensive working environment such that it alters the complainant's working conditions.

Definitions Related to Title IX Sexual Harassment

Formal complaint shall mean a document filed by a complainant or signed by the Title IX Coordinator alleging Title IX sexual harassment and requesting that the district investigate the allegation under the grievance process for formal complaints. The authority for the Title IX Coordinator to sign a formal complaint does not make the Title IX Coordinator a party in the grievance process for formal complaints. The phrase "document filed by a complainant" refers to a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. [15][18]

Supportive measures shall mean nondisciplinary, nonpunitive 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. [18]

Supportive measures shall be designed to restore or preserve equal access to the educational program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or to deter sexual harassment. Supportive measures may include, but are not limited to: [18]

1. **Counseling or Employee Assistance Program.**

2. **Extensions of deadlines or other course-related adjustments.**
3. **Modifications of work or class schedules.**
4. **Campus escort services.**
5. **Mutual restrictions on contact between the parties.**
6. **Changes in work locations.**
7. **Leaves of absence.**
8. **Increased security.**
9. **Monitoring of certain areas of the campus.**
10. **Assistance from domestic violence or rape crisis programs.**
11. **Assistance from community health resources including counseling resources.**

Title IX sexual harassment means conduct on the basis of sex that satisfies one or more of the following: [18]

1. **A district employee conditioning the provision of an aid, benefit, or district service on an individual's participation in unwelcome sexual conduct, commonly referred to as *quid pro quo sexual harassment*.**
2. **Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to a district education program or activity.**
3. **Sexual assault, dating violence, domestic violence or stalking.**

a. ***Dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship is determined by the following factors: [19]**

- i. **Length of relationship.**
- ii. **Type of relationship.**
- iii. **Frequency of interaction between the persons involved in the relationship.**

b. ***Domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving federal funding, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. [19]**

c. ***Sexual assault* means a sexual offense under state or federal law that is classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. [20]**

d. ***Stalking*, under Title IX means stalking on the basis of sex, for example when the stalker desires to date a victim. Stalking means to engage in a course of conduct directed at a specific person that would cause a reasonable person to**

either: [19]

- i. Fear for their safety or the safety of others.
- ii. Suffer substantial emotional distress.

Such conduct must have taken place during a district education program or activity and against a person in the United States to qualify as sexual harassment under Title IX. An education program or activity includes the locations, events or circumstances over which the district exercises substantial control over both the respondent and the context in which the harassment occurs. Title IX applies to all of a district's education programs or activities, whether such programs or activities occur on-campus or off-campus. [14][15] [18]

Delegation of Responsibility

In order to maintain a program of nondiscrimination practices that is in compliance with applicable laws and regulations, the Board designates the [21]

[The district may choose the same or different individuals to fulfill the roles of Compliance Officer and Title IX Coordinator. If designating one (1) individual to fulfill both responsibilities, select the first option and enter the appropriate position title. If designating two (2) individuals to fulfill the separate responsibilities, select the second option and enter the appropriate position titles.]

{ } _____ as the district's Compliance Officer and Title IX Coordinator.
The Compliance Officer/Title IX Coordinator can be contacted at:

Address:

Email:

Phone Number:

{ } _____ as the district's Compliance Officer and
_____ as the district's Title IX Coordinator.

The Compliance Officer can be contacted at:

Address:

Email:

Phone Number:

The Title IX Coordinator can be contacted at:

Address:

Email:

Phone Number:

The Compliance Officer and Title IX Coordinator shall fulfill designated responsibilities to ensure adequate nondiscrimination procedures are in place, to recommend new procedures or modifications to procedures and to monitor the implementation of the district's nondiscrimination procedures in the following areas, as appropriate:

1. Review - Review of personnel practices and actions for discriminatory bias and compliance with laws against discrimination to include monitoring and recommending corrective measures when appropriate to written position qualifications, job descriptions and essential job functions; recruitment materials and practices; procedures for screening applicants; application and interviewing practices for hiring and promotions; district designed performance evaluations; review of planned employee demotions, non-renewal of contracts, and proposed employee disciplinary actions up to and including termination.
2. Training - **Provide** training for supervisors and staff to prevent, identify and alleviate problems of employment discrimination.
3. Resources - Maintain and provide information to staff on resources available to alleged victims in addition to the school complaint procedure **or Title IX procedures**, such as making reports to the police, and available **supportive measures such as** assistance from domestic violence or rape crisis programs, and community health resources including counseling resources.
4. **Reports/Formal Complaints** - Monitor and provide technical assistance to **individuals involved in managing informal reports and formal** complaints.

Guidelines

Title IX Sexual Harassment Training Requirements

The Compliance Officer and Title IX Coordinator, investigator(s), decision-maker(s), or any individual designated to facilitate an informal resolution process related to Title IX sexual harassment shall receive the following training, as required or appropriate to their specific role:

1. **Definition of sexual harassment.**
2. **Scope of the district's education program or activity, as it pertains to what is subject to Title IX regulations.**
3. **How to conduct an investigation and grievance process for formal complaints, including examination of evidence, drafting written determinations, handling appeals and informal resolution processes, as applicable.**
4. **How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias.**
5. **Use of relevant technology.**
6. **Issues of relevance including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.**
7. **Issues of relevance, weight of evidence and application of standard of proof and drafting investigative reports that fairly summarize relevant evidence.**
8. **How to address complaints when the alleged conduct does not qualify as Title IX sexual harassment but could be addressed under another complaint process or Board policy.**

All training materials shall promote impartial investigations and adjudications of formal complaints of Title IX sexual harassment without relying on sex stereotypes.

All training materials shall be posted on the district's website.

Disciplinary Consequences

An employee who violates this policy shall be subject to appropriate disciplinary action consistent with the applicable Board policy, collective bargaining agreement and individual contract, up to and including dismissal and/or referral to law enforcement officials.

Reports of Discrimination

Any reports of discrimination that are reviewed by the Title IX Coordinator and do not meet the definition of Title IX sexual harassment but are based on race, color, age, creed, religion, sex, sexual orientation, ancestry, genetic information, national origin, marital status, pregnancy or handicap/disability shall follow the Discrimination Complaint Procedures in Attachment 2 to this policy.

Reports of Title IX Sexual Harassment

Any reports deemed by the Title IX Coordinator to meet the definition of sexual harassment under Title IX shall follow the Title IX Sexual Harassment Procedures and Grievance Process for Formal Complaints in Attachment 3 to this policy.

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Legal

1. 43 P.S. 336.3
2. 43 P.S. 951 et seq
3. 34 CFR Part 106
4. 20 U.S.C. 1681 et seq
5. 29 U.S.C. 206
6. 29 U.S.C. 621 et seq
7. 29 U.S.C. 794
8. 42 U.S.C. 1981 et seq
9. 42 U.S.C. 2000e et seq
10. 42 U.S.C. 2000ff et seq
11. 42 U.S.C. 12101 et seq
12. U.S. Const. Amend. XIV, Equal Protection Clause
13. 20 U.S.C. 1232g
14. 34 CFR 106.44
15. 34 CFR 106.45
16. 34 CFR 106.71
17. 34 CFR Part 99
18. 34 CFR 106.30
19. 34 U.S.C. 12291
20. 20 U.S.C. 1092
21. 34 CFR 106.8
22. Pol. 317
23. Pol. 317.1
24. Pol. 806
25. Pol. 824
- 16 PA Code 44.1 et seq
- 18 Pa. C.S.A. 2709
- 28 CFR 35.140
- 28 CFR Part 41
- 29 CFR Parts 1600-1691
- EEOC Enforcement Guidance on Harris v. Forklift Sys., Inc., November 9, 1993
- EEOC Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 18, 1999
- EEOC Policy Guidance on Current Issues of Sexual Harassment, March 19, 1990
- Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998)
- Faragher v. City of Boca Raton, 524 U.S. 775 (1998)
- Pol. 320
- Pol. 815
- Pol. 832

8/5/2020

104-Attach 1 Report Form.pdf (170 KB)

104-Attach 2 Discrimination.docx (40 KB)

104-Attach 3 Title IX.docx (76 KB)

Web References from Discrimination / Title IX Sexual Harassment:

1. <https://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=1959&sessInd=0&smthLwInd=0&act=694&chpt=0&sctn=3&subsctn=0>
2. <https://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=1955&sessInd=0&smthLwInd=0&act=0222>
3. <https://www.law.cornell.edu/cfr/text/34/part-106>
4. <https://www.law.cornell.edu/uscode/text/20/chapter-38>
5. <https://www.law.cornell.edu/uscode/text/29/206>
6. <https://www.law.cornell.edu/uscode/text/29/chapter-14>
7. <https://www.law.cornell.edu/uscode/text/29/794>
8. <https://www.law.cornell.edu/uscode/text/42/chapter-21/subchapter-I>
9. <https://www.law.cornell.edu/uscode/text/42/chapter-21/subchapter-VI>
10. <https://www.law.cornell.edu/uscode/text/42/chapter-21F>
11. <https://www.law.cornell.edu/uscode/text/42/chapter-126>
12. <https://www.law.cornell.edu/constitution/amendmentxiv>
13. <https://www.law.cornell.edu/uscode/text/20/1232g>
14. <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf>
15. <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf>
16. <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf>
17. <https://www.law.cornell.edu/cfr/text/34/part-99>
18. <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf>
19. <https://www.law.cornell.edu/uscode/text/34/12291>
20. <https://www.law.cornell.edu/uscode/text/20/1092>
21. <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf>

In-Service: New Title IX Requirements

Luzerne Intermediate Unit # 18
John G. Audi, Esquire
Sweet, Stevens, Katz, & Williams
October 21, 2020

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Title IX

Title IX, clause of the 1972 Federal Education Amendments, signed into law on June 23, 1972, states 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."

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Summary of changes

- ▶ The regulations defines "sexual harassment" more narrowly than prior case law had done.
- ▶ The District must select a burden of proof: either "preponderance of the evidence" or "clear and convincing evidence".
- ▶ The burden of proof is on the District, not the Complainant or Respondent.
- ▶ The District must identify: a Title IX Coordinator; a Title IX investigator; a Title IX decision maker; and a Title IX appeals decision maker.
- ▶ Standard for liability for the District is changed to "actual knowledge" of harassment and "deliberate indifference" to that harassment.

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Summary of changes (cont.)

- ▶ Action may not be taken against a Respondent unless a formal complaint is filed.
- ▶ Supportive services must be offered to a Complainant even if no formal complaint is filed.
- ▶ A Title IX complaint may be filed by the Title IX Coordinator who receives multiple informal complaints about the same Respondent or for other reasons in the discretion of the Title IX Coordinator.
- ▶ The Respondent is entitled to all information secured in the complaint and investigation.
- ▶ No confidentiality requirements can be imposed.

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Summary of changes (cont.)

- ▶ Informal resolution may be offered under certain conditions.
- ▶ The District must post on its website: the identity and contact information for the Title IX Coordinator; its non-discrimination policy; and its training materials for Title IX.
- ▶ New due process requirements for disposition of a complaint, whether by hearing or through written questions.

Sexual harassment defined

- ▶ "unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity".
- ▶ This is a more narrow definition than had previously applied.
- ▶ Sexual assault, dating violence, domestic violence and stalking are *per se* harassment under the regulations.

Sexual harassment defined (cont.)

- ▶ Sexual harassment is defined as "conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual'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 person equal access to the District's education program or activity; or (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30)".

Title IX Coordinator

- ▶ Each District must designate at least one employee to be the Title IX Coordinator. The District must provide the Coordinator's or Coordinators' name or title, office address, email address, and phone number to "applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the District". This information must also be made available, along with the District's anti-discrimination policy, on the District's website and in any handbooks or catalogues provided to any person entitled to receive notification of the Title IX Coordinator's contact information. Additionally, each person entitled to the above notifications must be provided with the grievance process procedures and how the District will respond.

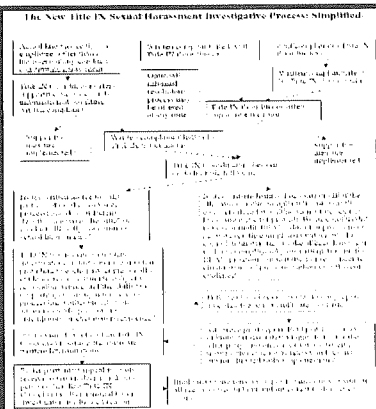
Title IX Coordinator (cont.)

- ▶ Must receive Title IX training as to the definition of sexual harassment, the scope of the school's education programs and activities, how to conduct an investigation and grievance process, remaining impartial and free of bias, and the issue of relevance.
- ▶ Title IX Coordinators cannot have a conflict of interest or bias for or against Complainants or Respondents generally or individually.
- ▶ Must accept complaints by email, mail, or phone. These reports can be made at any time, including during non-business hours, and may be made by anyone, whether or not they are the alleged victim of discrimination.

Title IX Coordinator (cont.)

- ▶ The Title IX Coordinator is the only employee who can sign a formal complaint alleging sexual harassment. When signing a formal complaint, the Title IX Coordinator does not become a Complainant or otherwise a party.
- ▶ Once a District has actual knowledge, the Title IX Coordinator must respond promptly and in a manner that is not deliberately indifferent. A District is deliberately indifferent if the response is clearly unreasonable given the known circumstances. The Title IX Coordinator must reach out to the Complainant to discuss the availability of supportive measures at no cost, and the process for filing a formal complaint.
- ▶ Actual knowledge means notice given to the Title IX Coordinator or to any elementary or secondary school employee.

Flowchart



Formal complaint

- ▶ No particular format is required, and any signed, written assertion of harassment may constitute a formal complaint.
- ▶ The Title IX Coordinator may conclude that he or she should file a formal complaint even if the Complainant has not elected to do so.
- ▶ Even in the absence of a formal complaint, the District must offer supportive services to the Complainant. Supportive measures are non-disciplinary services offered to the parties free of charge, either before or after the filing of a formal complaint, or where no formal complaint has been filed. Supportive measures could include counseling, course-related adjustments, modification of schedules, restrictions of contact between the parties, etc. Parties should be made aware of the range of supportive measure that may be available to them.

Complaint process

- ▶ Upon receipt of a formal complaint, written notice must be provided to all parties. Such notice shall include:
 - ▶ Notice of grievance process.
 - ▶ Notice of the allegations providing sufficient details known at the time, including the names of the parties and dates and locations of the alleged incident(s) if known, as well as sufficient time to prepare a response before any initial interviews.
 - ▶ Statement that Respondent is presumed not responsible and that a determination of responsibility will be made at the end of the grievance process.

Complaint process (cont.)

- ▶ The notice must also include:
 - ▶ Notice that the parties are entitled to an advisor who may be, but is not required to be, an attorney, and that the parties and their advisors will be entitled to review any evidence obtained as part of the investigation into the allegations.
 - ▶ Notice of any provision of school code of conduct that prohibits knowingly submitting false information during the grievance process.
 - ▶ If in the course of an investigation the District decides to investigate allegations concerning the Complainant or Respondent that are not part of the original notice to the parties, the District must provide notice of the new allegations to the parties who are known.

Complaint Dismissal Process

- ▶ A formal complaint must be dismissed if any of the following is true:
 - ▶ The alleged misconduct would not constitute sexual harassment even if proved.
 - ▶ The alleged misconduct did not occur in a school education program or activity.
 - ▶ Scope of the District's educational programs includes:
All buildings, transportation, sports and clubs, field trips, District sponsored professional development
 - ▶ The alleged misconduct did not occur against a person in the United States.

A formal complaint may be dismissed if at any time during the investigation or hearing any of the following is true:

- ▶ A Complainant notifies the District in writing that they wish to withdraw the complaint.
- ▶ The Respondent is no longer enrolled or employed by the District.
- ▶ Specific circumstances prevent the District from gathering sufficient evidence to reach a determination as to the formal complaint or allegations.
- ▶ Any dismissal of complaint requires written notice and the reasons for dismissal simultaneously to the parties.
- ▶ Although conduct may not satisfy the definition of "sexual harassment" under Title IX, that does not mean that the conduct is immune from discipline under Board policies or codes of conduct that may govern the behavior at issue, and under which corrective action may be taken.

Grievance Process

- ▶ Provide reasonably prompt time frames for conclusion of the grievance process including appeals and any informal resolution process. A temporary delay in the grievance process may be instituted with good cause and written notice to the Complainant and Respondent.
- ▶ Describe or list the range of possible disciplinary sanctions and remedies that may be implemented after a determination of responsibility.
- ▶ Indicate the standard of evidence that will be used to determine responsibility, whether it be a preponderance of evidence or clear and convincing evidence. The standard must be the same in all formal complaints of sexual harassment, whether the Respondent is a student or an employee.
- ▶ Provide the process and bases for the parties to appeal.

Grievance Process (cont.)

- ▶ Ensure that no information is required to be given that is protected by a legally recognized privilege, unless the person holding the privilege has waived it.
- ▶ Ensure that the Decision Maker is not the same person as Title IX Coordinator, Investigator, or Decision-Maker on appeal.
- ▶ The grievance process for elementary and secondary schools does NOT need to include a formal hearing. Regardless of whether or not there will be a formal hearing, and upon receipt of the investigative report, the parties must have the opportunity to submit written questions to be asked of any party or witness. Such questions should be answered, with opportunity for limited follow-up questions, before a final determination is made.

Grievance Process (cont.)

- ▶ Questions and evidence concerning specific incidents of the Complainant's prior sexual behavior with respect to the Respondent are permitted only to prove someone other than Respondent committed the conduct at issue or to prove consent.
- ▶ Title IX Coordinator is responsible for effectively implementing any remedies after a final determination of responsibility by the Decision Maker.

Title IX Investigator

Responsibilities of an investigator include the following:

- ▶ Receive Title IX training as to the definition of sexual harassment, the scope of the school's education programs and activities, how to conduct an investigation and grievance process, remaining impartial and free of bias, and the issue of relevance.
- ▶ Understand the scope of the District's educational programs which include all buildings, transportation, sports and clubs, field trips, and District sponsored professional development.
- ▶ Investigators cannot have a conflict of interest or bias for or against Complainants or Respondents generally or individually.

Bias and Impartiality

- ▶ Bias is a pre-disposition toward an outcome
- ▶ Bias can be specific to an individual, or a broad group

Title IX Investigator (cont.)

- ▶ The Title IX response system should not be designed to favor Complainants.
- ▶ Impartiality does not mean that the Investigator may not make credibility determinations - he or she should do so, but based on factors such as the presence or absence of corroboration, the internal inconsistencies of evidence or even such elements as the demeanor of the witness, Complainant or Respondent.
- ▶ Those credibility determinations should be made after the evidence has been collected.
- ▶ Do not seek or use evidence or information protected under a legally recognized privilege, unless the person holding the privilege has waived it.

Title IX Investigator (cont.)

- ▶ If during the course of the investigation, it is decided to also investigate allegations concerning either party which were not included in the notice sent to the parties informing them of the original allegations, additional notice must be provided to the parties informing them of the additional allegations.
- ▶ The burden of proof and of gathering evidence rests on the school, not on the parties.
- ▶ Establish the standard of evidence:
 - ▶ District must choose either "preponderance of the evidence" or "clear and convincing" as the standard.
 - ▶ "Preponderance of the evidence" essentially means that the scales tip one direction or the other.
 - ▶ "Clear and convincing" essentially means that the allegations are highly likely to be true (it is not "beyond a reasonable doubt").
- ▶ Whatever standard the District chooses must be utilized for all complaints.
- ▶ "Preponderance of the evidence" may not be used as the standard if "clear and convincing" is used as the standard for any other conduct violation.

Title IX Investigator (cont.)

- ▶ Hold investigative hearings and interviews. Provide equal opportunities for the parties to present witnesses and evidence, both inculpatory and exculpatory.
- ▶ Do not restrict either party from discussing the allegations or from gathering and presenting relevant evidence.
- ▶ Ensure that the parties have equal opportunity to have others present at any grievance proceeding, including an advisor. Do not restrict the parties' choice of advisor or their presence at any proceeding, although it is permissible to limit the extent to which the advisors may participate in proceedings, so long as restrictions apply equally to both parties.
- ▶ Provide written notice of date, time, location, participants and purpose for any hearing, interview, or other meeting, with sufficient time for the parties to prepare.

Title IX Investigator (cont.)

- ▶ Provide the parties with equal opportunity to inspect and review evidence gathered during the investigation that is directly related to the accusations in the formal complaint. This evidence must be sent to the parties and their advisors in electronic format or hard copy prior to completion of the investigative report. The parties must be given at least 10 days to submit a written response, which you will need to take into consideration prior to finalizing the report.
- ▶ With or without a formal hearing, questions and evidence about a Complainant's sexual predisposition or prior sexual behavior are not relevant unless 1) offered to prove that someone other than the Respondent committed the act alleged in the complaint, or 2) 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.
- ▶ Finalize an investigative report that summarizes the relevant evidence. Send a copy of this report, either electronically or hard copy, to the parties and their advisors at least ten days before any hearing or time of determination.

Title IX Investigator (cont.)

Gathering Evidence

Suggested questioning:

- ▶ Names of all alleged to have committed the discriminatory conduct.
- ▶ Complainant's relationship to the Respondent(s).
- ▶ Names and contact information of any witnesses.
- ▶ Times and locations of alleged misconduct.
- ▶ Is the misconduct ongoing.
- ▶ Who has the Complainant told about the alleged misconduct? When and what where they told.

Relevance

- ▶ **Relevant evidence** means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Relevant evidence may include evidence bearing upon the credibility of a witness or hearsay declarant.
- ▶ FERPA still applies so that Complainants and Respondents may discuss allegations to the extent necessary to prepare their respective positions, but if the discussion includes personally identifiable information about students, that is the limit of the permission.

Decision Makers

- ▶ Receive Title IX training as to the definition of sexual harassment, the scope of the school's education programs and activities, how to conduct a grievance process including hearings and appeals, remaining impartial and free of bias, and the issue of relevance.
- ▶ Decision Makers cannot serve in any other capacity, i.e. Title IX Coordinator, Investigator, or Decision Maker on appeal.
- ▶ Decision Makers cannot have a conflict of interest or bias for or against Complainants or Respondents generally or individually.
- ▶ Provide reasonably prompt time frames for the conclusion of the grievance process.

Decision Makers (cont.)

- ▶ The Decision Maker must issue a written determination regarding responsibility, applying the appropriate standard of evidence. The written determination must include the following:
 - ▶ Identification of allegations potentially constituting sexual harassment.
 - ▶ A description of the procedural steps taken from receipt of formal complaint through determination, including any notifications to parties, interviews with parties and witnesses, site visits, methods used to gather evidence, hearings held.
 - ▶ Findings of fact supporting the determination.
 - ▶ Conclusions regarding the application of the District's code of conduct to the facts.

Decision Makers (cont.)

- ▶ A statement of rationale for each allegation, including a determination of responsibility, any disciplinary sanctions to be 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.
- ▶ Procedures and bases to appeal.
- ▶ The written determination must be provided to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the District provides the parties with the determination of the result of the appeal, or if an appeal is not filed, it becomes final on the date on which an appeal would no longer be considered timely.

Appeals

- ▶ Both Complainants and the District are entitled to an appeal from the final determination of responsibility and from the District's dismissal of a formal complaint on the following bases: procedural irregularity that affected the outcome; new evidence that could affect the outcome; or bias or conflict of interest on the part of a Title IX Coordinator, Investigator, or Decision Maker that affected the outcome. Appeals may also be offered equally to both parties on other grounds.
- ▶ When a party appeals, the District must notify the other party in writing. The Decision Maker in the appeal cannot be the same person as those who serve as Title IX Coordinator, Investigator, or the original Decision Maker.
- ▶ Each party shall have the opportunity to submit a written statement supporting or challenging the determination of responsibility.
- ▶ A written decision should be issued to the parties simultaneously and include the rationale for reaching the decision.

Appeals Decision Makers

- ▶ Receive Title IX training as to the definition of sexual harassment, the scope of the school's education programs and activities, how to conduct a grievance process including appeals, remaining impartial and free of bias, and the issue of relevance.
- ▶ Appeals Decision Makers cannot serve in any other capacity, i.e. Title IX Coordinator, Investigator, or Initial Decision Maker.
- ▶ Decision Makers cannot have a conflict of interest or bias for or against Complainants or Respondents generally or individually.
- ▶ Both parties must be offered the chance to appeal the determination of responsibility.
- ▶ Both parties must be given equal opportunity to submit a written statement in support of or challenging the outcome of the determination of responsibility.

Appeals Decision Makers (cont.)

- ▶ Issue a written decision describing the result of the appeal and the rationale behind it.
- ▶ The written decision must be provided simultaneously to both parties.
- ▶ The determination regarding responsibility becomes final on the date that the District provides the parties with the determination of the result of the appeal.

Miscellaneous

- ▶ An informal resolution process can be offered to the parties only after a formal complaint has been filed, and can be entered into with the written consent of all parties at any time prior to reaching a final determination of responsibility. The parties cannot be required to participate in an informal resolution process.
- ▶ The District must provide the parties with the allegations, the requirements of the process, including any circumstances under which the parties would then be precluded from resuming the formal complaint, and any consequences resulting from participating in the informal resolution process such as records being maintained or shared.
- ▶ Either party may withdraw from the informal resolution process at any time prior to reaching an agreed upon resolution.
- ▶ The informal resolution process is not available where there are allegations of an employee sexually harassing a student.

Miscellaneous (cont.)

- ▶ The District must keep records of sexually harassment investigations for a period of seven years. This includes:
 - Any determination of responsibility.
 - Any audio or audiovisual recordings or transcripts.
 - Any sanctions imposed on the Respondent.
 - Any remedies provided to the Complainant.
 - Any appeal and results thereof.
 - Any informal resolution and results thereof.
 - All materials used to train Title IX Coordinators, Investigators, Decision Makers, and anyone who facilitates information resolution. These materials must also be made available on the District's website.
 - Any actions taken in response to a report of formal complaint of sexual harassment, including supportive measures. In each instance, the District must document the basis for its conclusion that its response was not deliberately indifferent, and document all measures taken to restore or preserve equal access to the District's education program or activity. If supportive measures are not provided to a Complainant, the District must document the reasons why such a response was not clearly unreasonable in light of known circumstances.

Miscellaneous (cont.)

- ▶ No District or other person may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX because that person made a report or complaint, testified or refused to testify or refused to participate in any manner in an investigation, proceeding, or hearing.
- ▶ Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.
- ▶ The District must keep confidential the identity of any persons who make a report or complaint of sex discrimination, including a report or formal complaint of sexual harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by statute or required by law to carry out an investigation, hearing, or judicial proceeding.