

## *Document Status: Draft Update*

### **STUDENTS**

#### **7:20 Harassment of Students Prohibited**

##### Bullying, Intimidation, and Harassment Prohibited

No person, including a School District employee or agent, or student, shall harass, intimidate, or bully a student on the basis of actual or perceived: race; color; national origin; military status; unfavorable discharge status from military service; sex; sexual orientation; gender identity; PRESSPlus1 gender-related identity or expression; ancestry; age; religion; physical or mental disability; order of protection status; status of being homeless; actual or potential marital or parental status, including pregnancy; association with a person or group with one or more of the aforementioned actual or perceived characteristics; or any other distinguishing characteristic. The District will not tolerate harassing, intimidating conduct, or bullying whether verbal, physical, sexual, or visual, that affects the tangible benefits of education, that unreasonably interferes with a student's educational performance, or that creates an intimidating, hostile, or offensive educational environment. Examples of prohibited conduct include name-calling, using derogatory slurs, stalking, sexual violence, causing psychological harm, threatening or causing physical harm, threatened or actual destruction of property, or wearing or possessing items depicting or implying hatred or prejudice of one of the characteristics stated above.

##### Sexual Harassment Prohibited

The District shall provide an educational environment free of verbal, physical, or other conduct or communications constituting harassment on the basis of sex as defined and otherwise prohibited by State and federal law. Sexual harassment of students is prohibited. PRESSPlus2 See policies 2:265, Title IX Sexual Harassment Grievance Procedure, and 2:260, Uniform Grievance Procedure.

Any person, including a district employee or agent, or student, engages in sexual harassment whenever he or she makes sexual advances, requests sexual favors, and/or engages in other verbal or physical conduct, including sexual violence, of a sexual or sex-based nature, imposed on the basis of sex, that:

1. Denies or limits the provision of educational aid, benefits, services, or treatment; or that makes such conduct a condition of a student's academic status; or
2. Has the purpose or effect of:
  - a. Substantially interfering with a student's educational environment;
  - b. Creating an intimidating, hostile, or offensive educational environment;
  - c. Depriving a student of educational aid, benefits, services, or treatment; or
  - d. Making submission to or rejection of such conduct the basis for academic decisions affecting a student.

The terms *intimidating*, *hostile*, and *offensive* include conduct that has the effect of humiliation,

embarrassment, or discomfort. Examples of sexual harassment include touching, crude jokes or pictures, discussions of sexual experiences, teasing related to sexual characteristics, and spreading rumors related to a person's alleged sexual activities. The term *sexual violence* includes a number of different acts. Examples of sexual violence include, but are not limited to, rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

### Making a Report or Complaint

Students are encouraged to promptly report claims or incidences of bullying, intimidation, harassment, sexual harassment, or any other prohibited conduct to the Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students, a Complaint Manager, or any staff member/employee with whom the student is comfortable speaking. [PRESSPlus3](#) A student may choose to report to an employee/person of the student's same sex/gender.

An allegation that a student was a victim of any prohibited conduct perpetrated by school personnel, including a school vendor or volunteer, shall be processed and reviewed according to policy 5:90, *Abused and Neglected Child Reporting*, in addition to any response required by this policy. Reports under this policy will be considered a report under Board policy 2:260, *Uniform Grievance Procedure*, and/or Board policy 2:265, *Title IX Sexual Harassment Grievance Procedure*. The Nondiscrimination Coordinator and/or Complaint Manager shall process and review the report according to the appropriate grievance procedure.

The Superintendent shall insert into this policy the names, office addresses, email addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers. At least one of these individuals will be female, and at least one will be male. The Nondiscrimination Coordinator also serves as the District's Title IX Coordinator. [PRESSPlus4](#)

### **Nondiscrimination Coordinator:**

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The Superintendent shall use reasonable measures to inform staff members and students of this policy by including:

1. For students, age-appropriate information about the contents of this policy in the District's student handbook(s), on the District's website, and, if applicable, in any other areas where policies, rules, and standards of conduct are otherwise posted in each school.

2. For staff members, this policy in the appropriate employee handbook(s), if applicable, and/or in any other areas where policies, rules, and standards of conduct are otherwise made available to staff.

### Investigation Process

~~Supervisors, Building Principals, or administrators~~ Any District employee who receives a report or complaint of harassment must promptly forward the report or complaint to the Nondiscrimination Coordinator or a Complaint Manager. Any employee supervisor or administrator who fails to promptly comply may be disciplined, up to and including discharge.

Reports and complaints of harassment will be confidential to the greatest extent practicable, subject to the District's duty to investigate and maintain an educational environment that is productive, respectful, and free of unlawful discrimination, including harassment.

~~The District shall investigate alleged harassment of students when the Nondiscrimination Coordinator or a Complaint Manager becomes aware of an allegation, regardless of whether a written report or complaint is filed.~~

For any report or complaint alleging sexual harassment that, if true, would implicate Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 et seq.), the Nondiscrimination Coordinator or designee [PRESSPlus5](#) shall consider whether action under policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, should be initiated.

For any other alleged student harassment that does not require action under policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, the Nondiscrimination Coordinator or a Complaint Manager or designee shall consider whether an investigation under policies 2:260, *Uniform Grievance Procedure*, and/or 7:190, *Student Behavior*, should be initiated, regardless of whether a written report or complaint is filed.

### Reports That Involve Alleged Incidents of Sexual Abuse of a Child by School Personnel [PRESSPlus6](#)

An *alleged incident of sexual abuse* is an incident of sexual abuse of a child, as defined in 720 ILCS 5/11-9.1A(b), that is alleged to have been perpetrated by school personnel, including a school vendor or volunteer, that occurred: on school grounds during a school activity; or outside of school grounds or not during a school activity.

Any complaint alleging an incident of sexual abuse shall be processed and reviewed according to policy 5:90, *Abused and Neglected Child Reporting*. In addition to reporting the suspected abuse, the complaint shall also be processed under policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, or policy 2:260, *Uniform Grievance Procedure* ~~any response required by this policy.~~

### Enforcement

Any District employee who is determined, after an investigation, to have engaged in conduct prohibited by this policy will be subject to disciplinary action up to and including discharge. Any third party who is determined, after an investigation, to have engaged in conduct prohibited by this policy will be addressed in accordance with the authority of the Board in the context of the relationship of the third party to the District, e.g., vendor, parent, invitee, etc. Any District student who is determined, after an investigation, to have engaged in conduct prohibited by this policy will be subject to disciplinary action, including but not limited to, suspension and expulsion consistent with the behavior policy. Any person making a knowingly false accusation regarding prohibited conduct will likewise be subject to disciplinary action ~~up to and including discharge, with regard to~~

employees, or suspension and expulsion, with regard to students.

### Retaliation Prohibited

Retaliation against any person for bringing complaints or providing information about harassment is prohibited (see policies 2:260, *Uniform Grievance Procedure*, and 2:265, *Title IX Sexual Harassment Grievance Procedure*).

Students should report allegations of retaliation to the Building Principal, an administrator, the Nondiscrimination Coordinator, and/or a Complaint Manager.

### LEGAL REF.:

[20 U.S.C. §1681](#) *et seq.*, Title IX of the Educational Amendments of 1972; [34 C.F.R. Part 106.](#)

[105 ILCS 5/10-20.12](#), [10-22.5](#), [5/27-1](#), and [5/27-23.7](#).

[775 ILCS 5/1-101](#) *et seq.*, Illinois Human Rights Act.

[23 Ill.Admin.Code §1.240](#) and [Part 200](#).

[Davis v. Monroe County Bd. of Educ.](#), 526 U.S. 629 (1999).

[Franklin v. Gwinnett Co. Public Schs.](#), 503 U.S. 60 (1992).

[Gebser v. Lago Vista Independent Sch. Dist.](#), 524 U.S. 274 (1998).

*West v. Derby Unified Sch. Dist. No. 260*, 206 F.3d 1358 (10th Cir. 2000).

CROSS REF.: 2:260 (Uniform Grievance Procedure), [2:265 \(Title IX Sexual Harassment Grievance Procedure\)](#), 5:20 (Workplace Harassment Prohibited), 5:90 (Abused and Neglected Child Reporting), 7:10 (Equal Educational Opportunities), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:185 (Teen Dating Violence Prohibited), 7:190 (Student Behavior), 7:240 (Conduct Code for Participants in Extracurricular Activities)

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### **PRESSPlus Comments**

PRESSPlus 1. Executive Order (EO) 2019-11, titled “Strengthening Our Commitment to Affirming and Inclusive Schools” established the Affirming and Inclusive Schools Task Force (Task Force) to identify strategies and best practices for ensuring welcoming, safe, supportive, and inclusive school environments for transgender, nonbinary, and gender nonconforming students. The Task Force delivered a report that served as the basis for two non-regulatory guidance documents entitled *Supporting Transgender, Nonbinary and Gender Nonconforming Students* and *Sample District Policy and Administrative Procedures* at [www.isbe.net/supportallstudents](http://www.isbe.net/supportallstudents). The Ill. State Board of Education (ISBE) hosts these documents on its website.

If the Board would like to incorporate ISBE’s *Sample District Policy and Administrative Procedures* policy recommendation into this policy, see the **PRESS Plus** Question 1 for policy 7:10, *Equal Educational Opportunities*. **Issue 105, August 2020**

PRESSPlus 2. Two laws apply to sexual harassment of students in Illinois. Title IX of the Education Amendments of 1972 (Title IX) and the IHRA prohibit discrimination on the basis of sex and sexual

harassment in any educational program or activity receiving federal financial assistance. 20 U.S.C. §1681. Title IX defines sexual harassment as conduct on the basis of sex that meets one or more of the following: (1) a district employee conditions the provision of an aid, benefit, or service 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 denies a person equal access to the District's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking as defined in federal law. 34 C.F.R. §106.30. Consult the board attorney to ensure the nondiscrimination coordinator and complaint managers are trained to appropriately respond to allegations of Title IX sexual harassment.

See policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, sample exhibit 2:265-E, *Title IX Sexual Harassment Glossary of Terms*, and sample procedures 2:265-AP1, *Title IX Sexual Harassment Response*, and 2:265-AP2, *Formal Title IX Sexual Harassment Complaint Grievance Process*, available at **PRESS** Online by logging in at [www.iasb.com](http://www.iasb.com).

The IHRA prohibits any district employee or agent from sexually harassing a student, and defines sexual harassment as any unwelcome sexual advances or requests for sexual favors made to a student, or any conduct of a sexual nature toward a student, when: (1) such conduct has the purpose of substantially interfering with the student's educational performance or creating an intimidating, hostile or offensive educational environment; or (2) the district employee or agent either explicitly or implicitly makes the student's submission to or rejection of such conduct as a basis for making various enumerated education-related determinations. 775 ILCS 5/5A-201(E).

The Ill. Dept. of Human Rights investigates charges of sexual harassment in violation of the IHRA, and it is a civil rights violation when a district fails to take remedial or disciplinary action against an employee the district knows engaged in sexual harassment. 775 ILCS 5/5A-102. **Issue 105, August 2020**

PRESSPlus 3. Using "or any employee with whom the student is comfortable speaking" ensures compliance with Title IX regulations providing that "any employee" of an elementary or secondary school who has notice of sexual harassment or allegations of sexual harassment is deemed to have *actual knowledge* which triggers a district's duty to respond. 34 C.F.R. §106.30. By including "any employee" in this list, this policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. **Issue 105, August 2020**

PRESSPlus 4. Title IX regulations require districts to designate and authorize at least one employee to coordinate their efforts to comply with Title IX and to refer to that employee as the *Title IX Coordinator*. 34 C.F.R. §106.8(a), amended at 85 Fed. Reg. 30573. Districts must identify the Title IX Coordinator by name, office address, email address, and telephone number.

The Nondiscrimination and Title IX Coordinator(s) need not be the same person. If the district uses a separate Title IX Coordinator who does not also serve as the Nondiscrimination Coordinator, see the **PRESS Plus** Question 1 in policy 2:260. **Issue 105, August 2020**

PRESSPlus 5. "Nondiscrimination Coordinator or designee" is used where Title IX is potentially implicated. In contrast, if Title IX is likely not implicated then "Nondiscrimination Coordinator or a Complaint Manager or designee" is used. **Issue 105, August 2020**

PRESSPlus 6. Required for districts located within a county served by an accredited Children's Advocacy Center (CAC). 105 ILCS 5/22-85 (final citation pending), added by P.A. 101-531 (governing the investigation of an *alleged incident of sexual abuse* of any child within any Illinois counties served by a CAC). For further discussion see f/n 14 in sample policy 5:90, *Abused and Neglected Child Reporting*, available at **PRESS** Online by logging in at [www.iasb.com](http://www.iasb.com).

If your school district is not within a county served by an accredited CAC, strike this subsection and select "Adopted with Additional District Edits" as the Save Status. **Issue 105, August 2020**