

## School Board

### Title IX Grievance Procedure <sup>1</sup>

Discrimination on the basis of sex, including sex-based harassment, affects a student's ability to learn and an employee's ability to work. Providing an educational and workplace environment free from discrimination on the basis of sex is an important District goal.

The District does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations (34 C.F.R. Part 106), including against applicants for employment,<sup>2</sup> students, parents/guardians, employees, and third parties.

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

<sup>1</sup> Title IX of the Education Amendments of 1972 (Title IX) (20 U.S.C. §1681 *et seq.*) requires this subject matter to be covered by policy and controls this policy's content. This policy contains items 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. Employee grievance procedures are a mandatory subject of bargaining and cannot be changed without the employee exclusive representative's consent. This sample policy and its companion sample policy 2:260, *Uniform Grievance Procedure*, are in addition to, and not a substitute for, the employee grievance procedure contained in a collective bargaining agreement.

For the sake of consistency and ease of administration, this policy addresses only Title IX grievances, except those contained in collective bargaining agreements. See the cross references for the policies referring to this Title IX grievance procedure policy.

A district must have at least one policy explicitly stating it does not discriminate on the basis of sex in its education programs or activities under Title IX and its implementing regulations (34 C.F.R. Part 106). 34 C.F.R. §106.8(b)(1). A district must prominently display its Title IX notice of nondiscrimination on its website and in each handbook, catalog, announcement, bulletin, and application form made available to students, applicants for employment, parents/guardians, employees, and collective bargaining units. 34 C.F.R. §106.8(c)(2)(i). The notice must state that nondiscrimination extends to any program or activity operated by the district, including employment; that inquiries about the application of Title IX and its regulations may be referred to the district's Title IX Coordinator, to the U.S. Dept. of Education's Office for Civil Rights, or both; the name or title, office address, email address, and telephone number of the district's Title IX Coordinator; how to locate the district's nondiscrimination policy and grievance procedures; how to report information about conduct that may constitute sex discrimination under Title IX; and how to make a complaint of sex discrimination. 34 C.F.R. §106.8(c)(1)(i). If necessary due to a publication's format or size, districts may instead include a statement that it prohibits sex discrimination in any education program or activity that it operates and that individuals may report concerns or questions to the Title IX Coordinator and provide the location of the notice on the district's website. 34 C.F.R. §106.8(c)(2)(ii). See the **Notice of Nondiscrimination** subhead of sample administrative procedure 2:265-AP1, *Title IX Response*, for a sample notice of nondiscrimination and nondiscrimination statement meeting the minimum requirements of Title IX regulations. See sample exhibit 2:250-E2, *Immediately Available District Public Records and Web-Posted Reports and Records*.

Title IX jurisdiction is geographically limited to discrimination against a person in the United States. 34 C.F.R. §106.8(d). Though all complaints of sex discrimination may not constitute sex discrimination under Title IX, Title IX's reach is broad because an alleged complainant or alleged respondent may be anyone *participating in or attempting to participate in* the district's educational program or activity in the United States – including applicants for employment, students, parents/guardians, employees, volunteers, and third parties. Whether someone is *participating in or attempting to participate in* the district's educational program or activity requires a fact-specific analysis made on a case-by-case basis. 89 Fed. Reg. 33483. A district is responsible only for alleged discriminatory conduct over which it exercises disciplinary authority or otherwise has substantial control. 89 Fed. Reg. 33529.

<sup>2</sup> Subpart C of Title IX applies *to institutions of vocational education*, defined as a school or institution "which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study." 34 C.F.R. §§106.15(d), 106.2. If Subpart C applies, add "admission and" before "employment."

### Title IX Sex Discrimination Prohibited

Sex discrimination as defined in Title IX (Title IX Sex Discrimination) is prohibited. A District employee, agent, or student violates this prohibition whenever that person engages in conduct on the basis of sex that causes another person to be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any education program or activity operated by the District. Title IX Sex Discrimination includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and/or gender identity.

Sex-based harassment is a form of Title IX Sex Discrimination. Sex-based harassment occurs whenever a person engages in conduct on the basis of sex that satisfies one or more of the following:<sup>3</sup>

1. A District employee, agent, or other person authorized by the District to provide an aid, benefit, or service under the District's education program or activity explicitly or impliedly conditions the provision of an aid, benefit, or service on a person's participation in unwelcome sexual conduct;<sup>4</sup> or
2. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive<sup>5</sup> that it limits or denies a person's ability to participate in or benefit from the District's education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking as defined in 34 C.F.R. §106.2.<sup>6</sup>

### Definitions from 34 C.F.R. §106.2<sup>7</sup>

*Complainant* means: (1) a student or employee who is alleged to have been subjected to conduct that could constitute Title IX Sex Discrimination; or (2) a person other than a student or employee who is alleged to have been subjected to conduct that could constitute Title IX Sex Discrimination and who

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<sup>3</sup> 34 C.F.R. §106.2. The definition of *sex-based harassment* in the policy and in Title IX includes *unwelcome* conduct. *Id.* However, case law does not always distinguish between *welcome* and *unwelcome* conduct. See Mary M. v. North Lawrence Community Sch. Corp., 131 F.3d 1220 (7th Cir. 1997) (8th grade student did not need to show that a school employee's sexual advances were *unwelcome* in order to prove sexual harassment).

<sup>4</sup> 34 C.F.R. §106.2. See sample exhibit 2:265-E, *Title IX Glossary of Terms*. This behavior is commonly called *quid pro quo* sex-based harassment. *Quid pro quo* sex-based harassment "covers harassment by members of a recipient's leadership, including board members, paid or unpaid, to the extent those individuals are authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity." 89 Fed. Reg. 33496. Title IX regulations do not limit *quid pro quo* sexual harassment to situations where the provision of an aid, benefit or service is conditioned on a *student's* participation in unwelcome sexual conduct. By way of example, *quid pro quo* Title IX sexual harassment involving an employee and a person other than a student may be implicated when: an employee tells a former student she can only get a letter of recommendation if she participates in unwelcome sexual conduct; an employee selects a volunteer for a coveted field trip chaperone position if he participates in unwelcome sexual conduct; or a supervisory employee subjects a subordinate employee to unwelcome sexual conduct in exchange for a promotion.

<sup>5</sup> Harassment can be pervasive if it is widespread, openly practiced, or well-known to students and staff, e.g., sex-based harassment occurring in hallways, graffiti in public areas, or harassment occurring during recess under a teacher's supervision. 89 Fed. Reg. 33509.

<sup>6</sup> See sample exhibit 2:265-E, *Title IX Glossary of Terms*, for these definitions. Prior to 8-1-24, Title IX regulations tied these definitions to definitions contained within other federal statutes. That is no longer the case, and the definitions are fully set forth in 34 C.F.R. §106.2.

<sup>7</sup> If the district uses sample exhibit 2:265-E, *Title IX Glossary of Terms*, or a similar document, the definitions of these terms within it should match the definitions used in this policy.

was participating or attempting to participate in the District's education program or activity at the time of the alleged Title IX Sex Discrimination. <sup>8</sup>

*Complaint* means an oral or written request to the District that objectively can be understood as a request for the District to investigate and make a determination about alleged discrimination under Title IX.

*Respondent* means a person who is alleged to have violated the District's prohibition on Title IX Sex Discrimination.

*Retaliation* means intimidation, threats, coercion, or discrimination against any person by the District, a student, or an employee or other person authorized by the District to provide aid, benefit, or service under the District's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the person has reported information, made a Complaint, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Title IX regulations. <sup>9</sup>

### Making a Report

A person who wishes to make a report under this policy may make a report to the Title IX Coordinator, Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students, a Complaint Manager, or any employee with whom the person is comfortable speaking. <sup>10</sup>

School employees who receive information about conduct that reasonably may constitute Sex Discrimination under this policy shall promptly forward the report or information to the Title IX Coordinator. An employee who fails to promptly make or forward a report or information may be disciplined, up to and including discharge.

The Superintendent shall insert into this policy and keep current the name, office address, email address, and telephone number of the Title IX Coordinator. <sup>11</sup>

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<sup>8</sup> The 2024 Title IX regulations shift the focus of the analysis from "whether the participation or attempted participation occurred at the time the complaint was filed" (as required under the 2020 Title IX regulations) to "the time of the alleged sex discrimination." 89 Fed. Reg. 33483.

<sup>9</sup> This streamlined definition of retaliation is based upon an example in *Resource for Drafting Nondiscrimination Policies, Notices of Nondiscrimination, and Grievance Procedures under 2024 Amendments to the U.S. Department of Education's Title IX Regulations*, U.S. Dept. of Education (4-19-24), at: [www2.ed.gov/about/offices/list/ocr/docs/resource-nondiscrimination-policies.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/resource-nondiscrimination-policies.pdf).

<sup>10</sup> Using "or any employee with whom the Complainant is comfortable speaking" ensures Title IX compliance because Title IX requires "any employee" with information about conduct that may reasonably constitute sex discrimination to notify the Title IX Coordinator. Therefore, a report to any employee triggers a district's duty to respond. 34 C.F.R. §106.44(c)(1). This policy contains an item upon which collective bargaining may be required. Any policy that impacts 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.

<sup>11</sup> Title IX regulations require districts to designate and authorize at least one employee to coordinate its efforts to comply with Title IX and to refer to that employee as the *Title IX Coordinator*. 34 C.F.R. §106.8(a). If a district has more than one Title IX Coordinator, it must designate one of its Title IX Coordinators to retain ultimate oversight to ensure the district's consistent compliance with its responsibilities under Title IX and its implementing regulations. 34 C.F.R. §106.8(a)(1). The Title IX Coordinator with ultimate oversight should be listed in this policy.

Districts must identify the Title IX Coordinator by name or title, office address, email address, and telephone number. 34 C.F.R. §106.8(c)(1)(i)(C). Consistent with how Nondiscrimination Coordinators and Complaint Managers are listed in **PRESS** sample policies, this policy requires the Title IX Coordinator's name to be listed. The name and contact information are not part of the adopted policy and do not require board action. This allows for amendments to the name and contact information when necessary. It is important for updated names and contact information to be inserted into this policy and regularly monitored.

**Title IX Coordinator:**

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Name

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Address

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Email

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Telephone

Processing and Reviewing a Report or Complaint

Upon receipt of a report of conduct that reasonably may constitute Title IX Sex Discrimination, the Title IX Coordinator and/or designee shall offer and coordinate supportive measures, as appropriate, for a Complainant.

Further, the Title IX Coordinator will analyze the report to identify and determine whether there is another or an additional appropriate method(s) for processing and reviewing it.<sup>12</sup> For any report received, the Title IX Coordinator shall review Board policies 2:260, *Uniform Grievance Procedure*; 5:10, *Equal Employment Opportunity and Minority Recruitment*; 5:20, *Workplace Harassment Prohibited*; 5:90, *Abused and Neglected Child Reporting*; 5:120, *Employee Ethics; Code of Professional Conduct; and Conflict of Interest*;<sup>13</sup> 7:10, *Equal Educational Opportunities*; 7:20, *Harassment of Students Prohibited*; 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*; 7:185, *Teen Dating Violence Prohibited*; and 7:190, *Student Behavior*, to determine if the allegations in the report require further action under those policies.

Reports of alleged Title IX Sex Discrimination will be confidential to the greatest extent practicable, subject to the District’s duty to investigate and maintain an educational program or activity that is productive, respectful, and free of Title IX Sex Discrimination.

Title IX Complaint Grievance Process

The Superintendent or designee shall implement procedures to ensure the prompt and equitable resolution of all Complaints according to a grievance process that fully complies with 34 C.F.R.

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A district’s Nondiscrimination Coordinator often also serves as its Title IX Coordinator. See sample policy 2:260, *Uniform Grievance Procedure*.

<sup>12</sup> See sample exhibit 2:265-E, *Title IX Glossary of Terms*, for a discussion of Title IX Sex Discrimination and non-Title IX Sex Discrimination. If allegations of Title IX Sex Discrimination arise out of the same facts and circumstances as allegations of another type of discrimination, i.e., race discrimination in violation of Title VI of the Civil Rights Act of 1964, the district has the discretion to use this policy to address the sex and race discrimination or to choose a different process that complies with Title IX regulations. 89 Fed. Reg. 33642. Consult the board attorney for further guidance.

<sup>13</sup> See sample administrative procedure 5:120-AP2, *Employee Conduct Standards*.

§106.45.<sup>14</sup> See the District's Title IX Complaint Grievance Process (Grievance Process) under administrative procedure 2:265-AP2, *Formal Title IX Complaint Grievance Process*.<sup>15</sup>

When a Complaint is filed, the Title IX Coordinator will investigate it and make a determination regarding the outcome of the Complaint, or appoint a qualified person(s) to undertake the investigation and make a determination regarding the outcome of the Complaint.<sup>16</sup>

### Enforcement

Any District employee who is determined, at the conclusion of the Grievance Process, to have engaged in Title IX Sex Discrimination will be subject to disciplinary action up to and including discharge. Any third party who is determined, at the conclusion of the Grievance Process, to have engaged in Title IX Sex Discrimination 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/guardian, invitee, etc. Any District student who is determined, at the conclusion of the Grievance Process, to have engaged in Title IX Sex Discrimination will be subject to disciplinary action, including, but not limited to, suspension and expulsion consistent with student behavior policies.<sup>17</sup> Any person making a knowingly false accusation regarding Title IX Sex Discrimination will likewise be subject to disciplinary action.

This policy does not increase or diminish the ability of the District or the parties to exercise any other rights under existing law.<sup>18</sup>

### Retaliation Prohibited<sup>19</sup>

The District prohibits any form of retaliation, including peer retaliation, in its education program or activity. Any person should report claims of retaliation using this Board policy 2:265, *Title IX Grievance Procedure*.<sup>20</sup>

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<sup>14</sup> 34 C.F.R. §106.45(b). For a Title IX complaint grievance process, see sample administrative procedure 2:265-AP2, *Formal Title IX Complaint Grievance Process*. See also sample administrative procedures 2:265-AP1, *Title IX Response*, and 2:265-AP3, *Title IX Coordinator*.

<sup>15</sup> 34 C.F.R. §106.45(b)(1) lists the basic requirements for a grievance process. While live hearings are only required for postsecondary institutions, elementary and secondary schools may choose to offer them as part of their grievance process. **Consult the board attorney if the board wants the district to use a live hearing in its grievance process.**

<sup>16</sup> This policy gives Title IX Coordinators the flexibility to appoint another qualified individual to conduct an investigation. This may be appropriate when the neutrality or efficacy of the Title IX Coordinator is an issue, and/or where the district wishes to have the expertise that an in-house or outside attorney may afford to an investigation. Alternative appointments are often made in consultation with the Superintendent or other district-level administrator (except in cases involving Complaints about those individuals) and the board attorney. If a Complaint involves the Superintendent or other district-level administrator, alternative appointments are often made in consultation with the board and the board attorney.

<sup>17</sup> See sample policies 7:190, *Student Behavior*, and 7:230, *Misconduct by Students with Disabilities*. See also sample policies 7:200, *Suspension Procedures*, and 7:210, *Expulsion Procedures*, for due process requirements when student suspension or expulsion is recommended following a determination of responsibility for Title IX Sex Discrimination.

<sup>18</sup> Examples of rights the district or parties may exercise ancillary to this Title IX grievance procedure include, but are not limited to: disciplinary processes for suspensions and expulsions of students under 105 ILCS 5/10-22.6; tenured teacher dismissal proceedings under 105 ILCS 5/24-12; any other pre-termination process required by an applicable collective bargaining agreement, employment policy or procedure, or employment contract; and student appeal of a sex equity grievance decision under 23 Ill. Admin. Code §200.40 (see sample policy 7:10, *Equal Educational Opportunities*).

<sup>19</sup> 34 C.F.R. §106.71.

<sup>20</sup> Retaliation complaints must be processed under this policy. 34 C.F.R. §106.71.

A student, employee, or other person authorized by the District to provide aid, benefit, or service under the District's education program or activity who retaliates against others for reporting or complaining of violations of this policy or for participating in any manner under this policy will be subject to disciplinary action, up to and including discharge, with regard to employees, or suspension and expulsion, with regard to students.

LEGAL REF.: 20 U.S.C. §1681 et seq., Title IX of the Educational Amendments of 1972; 34 C.F.R. Part 106.  
Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999).  
Gebser v. Lago Vista Independent Sch. Dist., 524 U.S. 274 (1998).

CROSS REF.: 2:260 (Uniform Grievance Procedure), 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:20 (Workplace Harassment Prohibited), 5:90 (Abused and Neglected Child Reporting), 5:100 (Staff Development Program), 5:120 (Employee Ethics; Code of Professional Conduct; and Conflict of Interest), 5:200 (Terms and Conditions of Employment and Dismissal), 5:240 (Suspension), 5:290 (Employment Termination and Suspension), 6:60 (Curriculum Content), 6:65 (Student Social and Emotional Development), 7:10 (Equal Educational Opportunities), 7:20 (Harassment of Students Prohibited), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:185 (Teen Dating Violence Prohibited), 7:190 (Student Behavior)