

**DISCRIMINATION/UNLAWFUL HARASSMENT/SEXUAL HARASSMENT
OF EMPLOYEES**

Background

The Board declares it to be the policy of the Mt. Lebanon District to provide to all persons equal access to all categories of employment free from all forms of harassment and discrimination in this District, regardless of race, color, age, creed, religion, sex, gender, 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.

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.

Violations of this policy, including acts of retaliation as described in this policy, or knowingly providing false information, may result in disciplinary consequences under this policy and other applicable Board policy and procedures.

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.

Objective

It is the objective of this policy to communicate the District's commitment that discrimination, including harassment and Title IX sexual harassment, against employees in any manner is prohibited and will not be tolerated; to ensure that all reported or suspected acts of discrimination and harassment will be promptly, fully and impartially investigated and to institute appropriate disciplinary action including but not limited to reprimand, suspension or termination in accordance with laws and collective bargaining agreements, as applicable, whenever it is determined that discrimination and harassment has occurred.

This Policy is in addition to and not in lieu of any other applicable District Policy, principles and procedures, and applicable laws. All of the above enumerated types of conduct are strictly prohibited, even if such conduct is not within the legal definition of discrimination, harassment or Title IX sexual harassment.

Definitions

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to any employee of the District (other than the respondent), including the District's Title IX Coordinator/Compliance Officer or any District official who has the authority to institute corrective measures on behalf of the District.

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

Consent means to give assent or approval. With respect to claims of Discrimination and Sexual Harassment, Consent is knowing, voluntary, demonstrates clear permission by word or action to engage in an activity, typically a sexual activity. Consent shall not exist when the person engages in conduct constituting Sexual Harassment with a Complainant:

- (1) By Forcible Compulsion;
- (2) By threat of Forcible Compulsion that would prevent resistance by a person of reasonable resolution;
- (3) Who is unconscious or where the person knows that the Complainant is unaware that the Sexual Harassment is occurring;
- (4) Where the person has substantially impaired the Complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the Complainant, drugs, intoxicants or other means for the purpose of preventing resistance; or
- (5) Who suffers from a mental disability which renders the Complainant incapable of Consent.

Lack of resistance does not equal Consent. As used in this definition, **Forcible Compulsion** shall mean compulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the District to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

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

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 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.

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 performance when such conduct is:

1. Sufficiently severe, persistent or pervasive; and
2. A reasonable person in the complainant’s position would find that it creates an intimidating, threatening or abusive educational environment such that it deprives or adversely interferes with or limits an individual or group of the ability to participate in or benefit from the services, activities or opportunities offered by a school.

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

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 harassment, including 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 and the Code of Student Conduct 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 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.

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:

1. Counseling.
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 or housing 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.

Supportive measures may also include assessments or evaluations to determine eligibility for special education or related services, or the need to review an Individualized Education Program (IEP) or Section 504 Service Agreement based on a student's behavior. This could include, but is not limited to, a manifestation determination or functional behavioral assessment (FBA), in accordance with applicable law, regulations or Board policy.

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:
 - 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.

- 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.
- 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:
 - 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 and this policy. 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.

Policy

It is the policy of the District that all forms of discrimination, including harassment and Title IX sexual harassment, against and/or by all District employees, contracted individuals, visitors, vendors, volunteers and third parties in the District's educational program or activity is strictly prohibited. All complaints or reports of alleged discrimination will be promptly, thoroughly and impartially investigated.

Further, it is the Policy of the District that intimate or sexual relations between any and all District employees and students is strictly prohibited. Such strict prohibition includes intimate or sexual relations between an administrator, teacher, counselor, coach, advisor, program director or any District staff member and a student. Any violation of this Policy by a District employee will result in appropriate disciplinary action, including but not limited to, reprimand, suspension or termination of employment in accordance with laws and collective bargaining agreements as may be applicable, and referral to law enforcement authorities.

Compliance Officers/Title IX Coordinators

In order to maintain a program of nondiscrimination practices that is in compliance with applicable laws and regulations, the Administration shall designate and appoint one or more Compliance Officers/Title IX Coordinators. The initial Title IX Coordinator/Compliance Officer for discrimination/unlawful harassment/sexual harassment of secondary students is the Assistant Superintendent of Secondary Education.

The initial Title IX Coordinator/Compliance Officer for discrimination/unlawful harassment/sexual harassment of elementary students is the Assistant Superintendent of Elementary Education.

The initial Title IX Coordinator/Compliance Officer for discrimination/unlawful harassment/sexual harassment of employees is the Director of Human Resources.

The Compliance Officers/Title IX Coordinators are authorized to designate additional deputy Title IX Coordinators, including building principals, as deemed necessary.

The Title IX Coordinator/Compliance Officer(s) 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:

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.

Reporting Incidents of Alleged Title IX Sexual Harassment, Harassment, Discrimination and Retaliation

The Board encourages employees and third parties who believe they or others have been subject to discrimination or harassment, including Title IX sexual harassment, and/or retaliation, to promptly report such incidents to the building principal, building administrator or the Title IX Coordinator/Compliance Officer even if some elements of the related incident took place or originated away from school grounds, school activities or school conveyances..

A person who is not an intended victim or target of such offensive conduct but is adversely affected by the offensive conduct may file a report.

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

The complainant or the individual making the report may use the Discrimination/Sexual Harassment/ Bullying/ Hazing/Retaliation Report Form as adopted and published by the Administration 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 related procedures followed.

The building principal or building administrator shall promptly notify the Title IX Coordinator/Compliance Officer of all reports of discrimination, harassment, Title IX sexual harassment or retaliation. The Title IX Coordinator/Compliance Officer 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/Compliance Officer shall consider the complainant's wishes with respect to supportive measures. The Title IX Coordinator/Compliance Officer shall inform the complainant of the availability of supportive measures with or without the filing of a formal complaint and explain to the complainant the process for filing a formal complaint.

Reports of Discrimination, Unlawful Harassment and/or Retaliation

Any reports of discrimination, harassment or retaliation that are reviewed by the Title IX Coordinator/Compliance Officer and are based on protective classifications such as race, color, age, creed, religion, sex, gender, sexual orientation, gender, genetic information, national origin, marital status, pregnancy or handicap/disability, but a Formal Complaint of Title IX sexual harassment is not filed, shall follow the Discrimination Complaint Procedures as adopted by the Administration.

Reports of Title IX Sexual Harassment

If a Formal Complaint of Title IX Sexual Harassment is filed, the District shall follow the Title IX Sexual Harassment Procedures and Grievance Process for Formal Complaints as adopted by the Administration.

False Allegations

Abuse of these procedures will not be tolerated, and false allegations of discrimination, harassment, Title IX sexual harassment and/or retaliation will result in disciplinary action as may be appropriate under the circumstances.

Record Keeping

A written record of all reports of alleged, apparent or suspected incidents of discrimination and harassment and complaints of alleged discrimination and harassment, as well as a written record of the investigation of such reports and complaints and the findings of such investigations, shall be maintained by the District as a part of a confidential file used to monitor such incidents within the District. If a student is found to have violated this Policy, a record of such violation and the disciplinary action taken shall be kept in the student's confidential discipline file. If a District employee is found to have violated this Policy, a record of such violation and the disciplinary action taken will be placed in the employee's personnel file.

In addition, with respect to Title IX sexual harassment matters, the District shall maintain the following records for a 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/Compliance Officers, 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.

Disciplinary Action

A student who is determined to be responsible for violation of this policy shall be subject to appropriate disciplinary action consistent with the Code of Student Conduct, which may include but is not limited to:

1. Loss of school privileges.
2. Permanent transfer to another school building, classroom or school bus.
3. Exclusion from school-sponsored activities.
4. Detention.
5. Suspension.
6. Expulsion.
7. Referral to law enforcement officials.

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.

When a report alleges Title IX sexual harassment, disciplinary sanctions may not be imposed until the completion of the grievance process for Formal Complaints of Title IX Sexual Harassment as adopted by the Administration. 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 complaint process for formal complaints of Title IX Sexual Harassment, 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.

Emergency Removal -

When an emergency removal of a student, as described in the grievance process for formal complaints of Title IX Sexual Harassment, is warranted to address an immediate threat to the physical health or safety of an individual, and it is not feasible to continue educational services remotely or in an alternative setting, the normal procedures for suspension and expulsion shall be conducted to accomplish the removal, including specific provisions to address a student with a disability where applicable.

Retaliation

The Board prohibits retaliation by the District or any other person against any person for:

1. Reporting or making a 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, students 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/Compliance Officer immediately if retaliation is believed to have occurred.

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.

Title IX Sexual Harassment Training Requirements

In addition to any other training the District may provide in connection with enforcement of this and other policies, the Title IX Coordinator/Compliance Officer(s), 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 Title IX 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 Title IX sexual harassment training materials shall be posted on the District's website.

Administrative Responsibility

It shall be the responsibility of the Administration to:

1. Adopt, revise and amend and publish administrative procedures, processes and forms to implement this policy as appropriate.

2. Implement this policy and any related procedures, processes and forms.
3. Designate Title IX Coordinator/Compliance Officer(s). The District shall take steps as reasonably necessary to apprise all District personnel, students and parents of the identity of the Title IX Coordinator/Compliance Officer(s) and their contact information.
4. Communicate to staff and students information to recognize, discourage and refrain from discrimination, including harassment and Title IX sexual harassment.
5. Provide in-service instruction and training to all staff and Title IX personnel, including the Title IX Coordinator/Compliance Officer(s), investigator(s), decision-maker(s), or any individual designated to facilitate an informal resolution process related to Title IX sexual harassment.
6. Provide annual information to employees about discrimination, harassment, including Title IX sexual harassment and the procedures for reporting such conduct.
7. Inform District staff as to the reporting procedure when an employee believes that he or she has been sexually harassed.
8. Conduct a prompt, thorough and impartial investigation of all reports or complaints of alleged discrimination, including harassment and Title IX sexual harassment.
9. Take appropriate disciplinary action as needed and implement measures to prevent a recurrence of the conduct.

Communication

The administration will communicate this Policy to all personnel of the District.

In addition, a summary of this Policy, which shall include a definition of discrimination, harassment, Title IX sexual harassment and retaliation, a summary of prohibited conduct and a description of the reporting and complaint procedures, shall be included in any school publication that sets forth the District's comprehensive rules, regulations and procedures and which is provided which is provided to employees.

The identity and contact information of the Title IX Coordinator/Compliance Officer(s) shall also be included in such school publication and on the District's website. Copies of this Policy and related processes and procedures shall be available in each building principal's office.

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