

SEXUAL HARASSMENT (TITLE IX)

- 1.0 **Policy Statement and Purpose.** The District is committed to fostering and cultivating a safe, non-discriminatory learning and working environment that respects the dignity and value of all its members and is free from sexual harassment. The District will take prompt and equitable action to eliminate sexual harassment, prevent its recurrence, and remedy its effects. Furthermore, the District does not discriminate on the basis of sex in its educational programs, activities, operations, and employment decisions, consistent with its responsibilities under Title IX of the Education Amendments of 1972 (“Title IX”) and other applicable federal and state laws. This policy prohibits specific forms of behavior that may violate Title IX; other types of sex-based discrimination or harassment are addressed in District Policy 8400. State and federal criminal laws may also apply to conduct prohibited by this policy and criminal prosecution may take place independently of any investigatory or disciplinary action taken by the District.
- 2.0 **Publication of Policy.** All students, parents or guardians, sources of referral of applicants for employment, applicants for employment, and employees shall be notified of this policy and the contact information of the Title IX/Non-Discrimination Coordinator. Notice shall be provided in the District’s employment application materials, new employee handbooks, online postings of student/parent handbooks, and/or by other means reasonably calculated to advise all students, parents or guardians, sources of referral of applicants for employment, applicants for employment and employees.
- 3.0 **Definitions.**
 - 3.1 **Complainant.** An individual who is alleged to be the victim of conduct that could constitute sexual harassment.
 - 3.2 **Respondent.** An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
 - 3.3 **Actual knowledge.** The District has actual knowledge of an incident of alleged sexual harassment when any District employee receives a report of such behavior. This standard is not met when the only employee with knowledge of alleged sexual harassment is a respondent.
 - 3.4 **Report.** Information that places the District on notice that an incident of sexual harassment may have occurred. Examples of reports include personally witnessing an incident or receiving details of an incident from a complainant or third party.
 - 3.5 **Formal Complaint.** A document filed by a complainant or signed by the Title IX/Non-Discrimination Coordinator alleging sexual harassment by a respondent and requesting that the District investigate the allegation. At the time of the filing of a formal complaint, a complainant must be participating in or attempting to participate in the educational programs or activities of the District.
 - 3.6 **Grievance Process.** The process utilized to investigate formal complaints of sexual harassment.
 - 3.7 **Investigator.** The District-designated individual charged with conducting interviews, gathering evidence, and producing an investigation report.

- 3.8 **Decision-maker.** The District-designated individual charged with considering the evidence contained in the investigation report, making findings of fact, and analyzing the relevant policy provisions to determine whether the allegations constitute a policy violation.
- 3.9 **Sexual Harassment.** Conduct is prohibited under this policy regardless of the sex of the complainant and/or respondent. Sexual harassment as defined in this policy means conduct on the basis of sex that falls into one of the following categories.
- 3.9.1 ***Quid pro quo* sexual harassment.** A District employee conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct;
- 3.9.2 **Hostile environment 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 the District's education programs or activities;
- 3.9.3 **Sexual assault.** An offense that falls into the FBI's Uniform Crime Reporting categories of rape, fondling, incest, or statutory rape.
- 3.9.3.1 **Rape.** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- 3.9.3.2 **Fondling.** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim.
- 3.9.3.2.1 **Private Body Parts.** An individual's genitalia, breasts, or buttocks.
- 3.9.3.3 **Incest.** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- 3.9.3.4 **Statutory rape.** Non-forcible sexual intercourse with a person who is under the statutory age of consent.
- 3.9.4 **Dating Violence.** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined by a consideration of the length and type of relationship and the frequency of the parties' interactions during the relationship.
- 3.9.5 **Domestic Violence.** 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 or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim.
- 3.9.6 **Stalking.** Engaging in a course of conduct directed at a specific person based on their sex that would cause a reasonable person to a) fear for their safety or the safety of others, or b) suffer substantial emotional distress.

- 3.10 **Consent.** For the purposes of this policy, consent is defined by Colorado law. Consent for sexual activity means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act. A current or previous relationship is not sufficient to constitute consent. Submission under the influence of fear shall not be sufficient to constitute consent. A determination regarding the existence of consent is made based on the totality of the circumstances. Any conduct of a sexual nature directed toward a student by a District employee shall be presumed to be unwelcome and nonconsensual and is strictly prohibited by District Policy 4110.
- 3.11 **Retaliation.** Retaliation includes threats, intimidation, coercion, discrimination, or other adverse action against any person for the purpose of interfering with any right or privilege secured by Title IX or because the person has made a report or complaint, testified, assisted or participated or refused to participate in an investigation, proceeding, or hearing under this policy.
- 4.0 **Application of Policy.** This policy is applicable to allegations of sexual harassment occurring in the District's education programs or activities. This includes locations, events, or circumstances over which the District exercises substantial control over both a respondent and the context in which the sexual harassment occurred. The District's ability to take corrective action against third parties will be determined by the nature of the relationship of the third party to the District. Incidents outside the scope of this policy shall be addressed as appropriate in accordance with applicable law and District Policy.
- 5.0 **Title IX/Non-Discrimination Coordinator.** The Title IX/Non-Discrimination Coordinator shall be responsible for coordinating, monitoring, and documenting District compliance with this policy and with Title IX. The Title IX/Non-Discrimination Coordinator is to be informed of all reports or formal complaints of violations of this policy. The Title IX/Non-Discrimination Coordinator may delegate certain responsibilities under this policy to designees who have received appropriate training.
- 5.1 The District's Title IX/Non-Discrimination Coordinator is:
Megan Brooks
Educational Support Center (ESC)
1500 E. 128th Avenue
Thornton, CO 80241
720-972-4179
megan.brooks@adams12.org
- 5.2 The District's charter schools are responsible for conducting their operations in a manner consistent with Title IX and other applicable nondiscrimination laws. Charter schools shall designate their own Title IX/Non-Discrimination Coordinator and publish the contact information for their Title IX/Non-Discrimination Coordinator.
- 6.0 **Supportive Measures.** Upon the District's receipt of actual knowledge of alleged sexual harassment addressed by this policy, the Title IX/Non-Discrimination Coordinator shall contact a complainant to offer supportive measures. Supportive measures are available

without charge to 1) a complainant regardless of whether a formal complaint of sexual harassment is or will be filed and 2) to both parties following the filing of a formal complaint. Appropriate supportive measures are determined on a case-by-case basis, in collaboration between building administrators or supervisors, the Title IX/Non-Discrimination Coordinator, and/or other appropriate District employees. Supportive measures shall be confidential to the extent possible and the Title IX/Non-Discrimination Coordinator is responsible for ensuring the effective implementation of any supportive measures.

- 6.1 Examples of supportive measures include, but are not limited to: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual no-contact directives, leaves of absence, changes in work locations, and other, similar measures.
- 6.2 **Emergency Removal.** Following the receipt of a report of sexual harassment against a student, the District may remove a student respondent from its educational programs or activities on an emergency, temporary basis. Before removing a student respondent on a temporary basis, the District shall:
 - 6.2.1 Conduct an individualized safety and risk analysis that accounts for the specific allegations of sexual harassment against the student respondent;
 - 6.2.2 Determine that the student respondent poses an immediate threat to the physical health and safety of any student or individual in the District's educational programs or activities; and
 - 6.2.3 Provide the student respondent with written notice and an opportunity to challenge the temporary removal.
- 6.3 **Administrative Leave.** Following a report of alleged sexual harassment, the District may place an employee respondent on administrative leave or take other action during the pendency of the grievance process, in accordance with applicable law, master agreements and other District policies.
- 7.0 **Privacy.** The District is committed to protecting the privacy of all individuals involved in the grievance process and resolution of complaints under this policy. The District will make reasonable efforts to protect the privacy of participants in the grievance process, in accordance with applicable law, while balancing the need to gather information to assess the report and to take steps to eliminate sexual harassment, prevent its recurrence, and remedy its effects.
- 8.0 **Reporting to the Title IX/Non-Discrimination Coordinator.** When a District employee receives a report of alleged sexual harassment from any source, the District is deemed to have actual notice of the allegation. All District employees shall notify the Title IX/Non-Discrimination Coordinator of any reports of alleged sexual harassment they receive immediately when practical and not later than 24 hours following receipt of a report. All relevant information the District employee receives (names, dates, locations, and details) shall be provided to the Title IX/Non-Discrimination Coordinator. Such information can be provided to the Title IX/Non-Discrimination Coordinator in person, by mail, via

phone, or email, using the Title IX/Non-Discrimination Coordinator's contact information and can be made 24 hours a day, seven (7) days a week via voicemail or email. When practicable, the details of the report to the Title IX/Non-Discrimination Coordinator shall also be provided to the building principal.

8.1 **Mandatory Reporting.** Some conduct qualifying as sexual harassment – particularly conduct involving physical or sexual violence – may also qualify as child abuse or neglect, even when another child may be responsible for the abuse. Before undertaking their responsibilities under this policy, an employee shall determine whether observed or alleged conduct gives rise to reasonable cause to believe that child abuse or neglect has occurred or is occurring, triggering the employee's mandatory reporting obligation under state law and District Policy 5540. If at any point during the grievance process, an employee determines he/she/they has/have reasonable cause to believe child abuse or neglect has occurred or is occurring, the employee shall immediately take steps necessary to satisfy the employee's mandatory reporting obligations.

9.0 **Reporting Expectations.** Students, parents or guardians, and other non-employees who witness suspected sexual harassment are encouraged to report it immediately to a teacher or building administrator to assist the District's sexual harassment prevention efforts.

10.0 **Effect of Law Enforcement Investigation.** Some sexual harassment may also violate state criminal law. Thus, under certain circumstances, law enforcement may also conduct an investigation of alleged sexual harassment. At the request of law enforcement, the District may temporarily delay the commencement of its grievance process in order to avoid jeopardizing a pending criminal investigation. Any such delay, however, must be for a reasonable amount of time and the Title IX/Non-Discrimination Coordinator shall periodically request status updates from law enforcement to ensure a continued need for delay. The District shall promptly resume its process upon receiving notice from law enforcement that it may proceed. In addition, a requested delay shall not prevent the District from taking supportive measures or other actions.

11.0 **Reporting and Initial Assessment.** Upon receipt of a report or information regarding a potential violation of this policy, the Title IX/Non-Discrimination Coordinator will promptly contact a complainant to confidentially discuss available supportive measures and explain the process of filing a formal complaint.

11.1 **Anonymous Reporting.** When the District receives an anonymous report of alleged sexual harassment, the Title IX/Non-Discrimination Coordinator shall make reasonable efforts to identify any complainants, while respecting the anonymity of reporters under Colorado's Safe2Tell Act, C.R.S. 24-31-601 et seq. If the Title IX/Non-Discrimination Coordinator cannot identify any of the parties involved, the report shall be retained for the time period required by applicable law and any efforts made to identify parties shall be documented in the event a complainant later comes forward and wishes to pursue the grievance process.

12.0 **Filing a Formal Complaint.** A formal complaint may be filed with the Title IX/Non-Discrimination Coordinator in person or via mail or email and can be filed by a complainant or by a parent or guardian who has the legal right to act on behalf of a minor

complainant. Individuals requiring other accommodations for purposes of making a complaint due to disability or other reasons shall contact the Title IX/Non-Discrimination Coordinator. Complaints shall include a detailed description of the alleged sexual harassment, the date(s), the full names of the parties involved and any witnesses.

- 12.1 **Anonymity.** In order to proceed with the grievance process, a complainant may not remain anonymous as due process requires that all parties to the process be identified.
 - 12.2 **Formal Complaints Signed by Title IX/Non-Discrimination Coordinator.** In certain cases, the Title IX/Non-Discrimination Coordinator may sign a formal complaint on behalf of the District when a complainant declines to file a formal complaint and the Title IX/Non-Discrimination Coordinator determines an investigation is necessary. In these circumstances, the Title IX/Non-Discrimination Coordinator does not become a party and a complainant shall not be compelled to participate in the grievance process.
 - 12.3 **Dismissal of Certain Formal Complaints.** Upon receipt of a formal complaint, the Title IX/Non-Discrimination Coordinator shall review it to determine whether it falls under the jurisdiction of this policy. If it does not, the Title IX/Non-Discrimination Coordinator shall dismiss the complaint. A formal complaint must be dismissed when the investigation reveals that the complaint does not constitute sexual harassment, the event did not occur in a District program or activity, or the event did not occur against a person in the United States. Further, a complaint may be dismissed at any time upon written request of a complainant or as determined by the Title IX/Non-Discrimination Coordinator in accordance with applicable law including when the respondent is no longer enrolled or employed by the District, and when specific circumstances prevent the District from gathering evidence sufficient to reach a determination. Written notice of a dismissal shall be promptly submitted simultaneously to the parties.
 - 12.3.1 **Availability of Other District Processes.** Dismissal of a formal complaint does not prevent the District from taking action to remedy the complained-of behavior consistent with other applicable District policies.
- 13.0 **District Resolution.** Following the filing of a complaint, there are two available options for resolution: a) the grievance process, which involves an investigation, report, and potential sanctions, and b) an informal resolution, which involves a variety of informal options for addressing complaints.
 - 13.1 **Informal Resolution.** If both parties agree and the Title IX/Non-Discrimination Coordinator deems it appropriate, an informal resolution process, which does not involve an investigation and may involve mediation or other restorative justice models, may be instituted. The parties' agreement must be voluntary, non-coerced, and documented in writing. At any time prior to engaging in an informal resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

- 13.1.1 **Unavailability of Informal Resolution.** Informal resolution is not available in cases where a District employee is alleged to have sexually harassed a student.
- 13.1.2 **Potential Student Disciplinary Sanctions.** An informal resolution may result in disciplinary sanctions appropriate for the misconduct which shall be imposed in accordance with applicable law and District Policy, including but not limited to a warning, restorative justice, alternatives to suspension or expulsion, suspension or expulsion.
- 13.2 **Grievance Process.** If a complaint proceeds to the grievance process, the Title IX/Non-Discrimination Coordinator shall designate appropriately trained individuals to serve as the investigator and the decision-maker. Either party may challenge the appointment of the investigator or decision-maker based on bias or conflict of interest by contacting the Title IX/Non-Discrimination Coordinator.
 - 13.2.1 **Notice to Parties.** Upon the institution of the grievance process, the investigator shall provide the parties with written notice of the complaint. The written notice shall include the names of the parties involved, the specific section of this policy allegedly violated, this policy's grievance and informal resolution process, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident(s). If additional allegations are discovered during the grievance process, the investigator shall issue an amended notice including additional allegations and details regarding those allegations.
 - 13.2.2 **Presumption of Non-Responsibility.** The grievance process is a neutral fact-gathering process and a respondent is presumed not responsible for the alleged policy violation until a determination is made at the end of the grievance process. This presumption may be overcome only where there is sufficient evidence of a policy violation. The investigator shall not draw any adverse inference from a decision by a respondent not to participate in the grievance process. The grievance process, however, may proceed, and a finding of responsibility and imposition of any sanction(s) may occur without a respondent's participation.
 - 13.2.3 **Timeframe for Process.** Generally, the timeframe from the issuance of a notice of investigation through the release of the written determination shall not exceed sixty (60) calendar days, unless good cause is shown. If there is a need for a delay, the investigator or decision-maker shall notify both parties in writing of the delay and the reason for it.
 - 13.2.4 **Right to an Adviser.** During the process, each party is entitled to the adviser of their choice who may, but is not required to be, an attorney. During interviews and meetings, the adviser may not speak for the party and must limit his/her/their role to consulting with and advising the party. The District retains the right to establish restrictions regarding the extent to which the advisor(s) may participate in the proceedings. Any restrictions on advisor(s) shall apply equally to both parties.

- 13.2.5 **Interviews and Evidence.** Both parties shall have an equal opportunity to be heard, to provide evidence, and to review evidence obtained through the course of the grievance process. The investigator shall interview the parties and any witnesses and shall review any available evidence. The investigator shall also determine the relevance of evidence and what evidence will be included in the investigator report for consideration by the decision-maker.
- 13.2.6 **Written Notice of All Meetings.** Prior to any investigative interviews, hearings, or other meetings, a party shall receive written notice of the date, time, location, purpose, and participants to ensure the party is adequately prepared to participate.
- 13.2.7 **Evidence Review.** Prior to the issuance of the investigation report, the parties shall be provided for their review an electronic or hard copy of all evidence gathered by the investigator that is directly related to the allegations in the formal complaint, including evidence the investigator does not intend to rely upon in the investigation report. Evidence may be redacted, if appropriate, in accordance with applicable law and District policy. The parties shall have ten work (10) days to review the evidence and may choose to provide a written response for the investigator to consider prior to the issuance of the investigation report. The response can include corrections, additions, or arguments regarding the relevance of specific evidence. The investigator shall consider any written response to the evidence when preparing the investigation report.
- 13.2.8 **Investigation Report.** Prior to the issuance of any findings regarding a policy violation, both parties shall have ten (10) work days to review the investigation report, which is a summation of the evidence to be submitted to the decision-maker. If either party wishes to correct or add to the evidence, submit arguments regarding relevance of certain evidence or suggest additional witnesses they must notify the investigator during the review period. Corrections, arguments regarding relevance, additional evidence or new witnesses, may not be submitted after the review period has ended and shall not be considered in an appeal.
- 13.2.9 **Extension to Review Periods.** If a party requires additional time to review the evidence or investigation report, he/she/they must contact the Title IX/Non-Discrimination Coordinator to make a request. The request must include the reason for the extension and a proposed new deadline. Such extensions are granted at the discretion of the Title IX/Non-Discrimination Coordinator based on a showing of good cause.
- 13.2.10 **Submission of Investigation Report.** Following the review period, the investigator shall submit the investigation report and any documentary evidence to the decision-maker for their review. The parties shall also receive copies of the investigation report.

- 13.2.11 **Questioning of Parties and Witnesses.** After the investigator submits the finalized investigation report to the decision-maker and parties, the parties shall have the opportunity to submit relevant written questions to one another and to the witnesses. Each party shall be provided copies of the questions posed and answers to those questions, and shall have an additional opportunity for limited follow-up based on the first round of questions. The decision-maker has discretion to determine the relevance of any proposed questions and shall provide a written explanation for any decision to exclude a question as not relevant.
- 13.2.11.1 Questions or evidence about a complainant's sexual predisposition or prior behavior are not relevant unless offered to 1) demonstrate that someone other than a respondent committed the alleged sexual harassment or 2) demonstrate consent based on specific incidents of a complainant's prior sexual behavior with a respondent.
- 13.2.12 **Standard of Review.** In determining whether alleged sexual harassment constitutes a policy violation, the decision-maker shall use a preponderance of the evidence standard. This means that the decision-maker shall determine whether it is more likely than not that a policy violation occurred.
- 13.2.13 **How Evidence is Evaluated by the Decision-maker.** In evaluating the allegations, the decision-maker shall consider the totality of the facts, circumstances, and evidence. No single factor shall be conclusive in the evaluation of evidence and/or the determination of whether the policy has been violated.
- 13.2.14 **Written Determination.** The decision-maker shall consider the investigation report and prepare written findings 1) outlining findings of fact and whether a policy violation occurred, 2) any disciplinary sanctions to be implemented consistent with District Policy and applicable law and the rationale for those sanctions, and 3) whether the District will provide remedies to a complainant.
- 13.2.14.1 **Potential Disciplinary Sanctions.** If the decision-maker determines that a respondent violated the policy, consequences appropriate for the misconduct shall be imposed in accordance with applicable law and District Policy, including but not limited to a warning, restorative justice, alternatives to suspension or expulsion, suspension, expulsion, or termination. Nothing in this policy shall be construed to prohibit discipline for conduct which, although it does not rise to the level of sexual harassment as defined by this policy, otherwise violates other District Policies.

- 13.2.14.2 If the decision-maker determines that the respondent is responsible for violations of District Policies other than 8410, the decision-maker must discuss this determination with the District's Title IX/Non-Discrimination Coordinator and/or General Counsel as to next steps.
 - 13.2.15 **Release of Written Determination.** Upon completion of the written determination, the decision-maker shall provide it to the Title IX/Non-Discrimination Coordinator, who shall simultaneously provide it to the parties.
 - 13.3 **Appeals.** If either party is not satisfied with the written determination, the party may appeal to the Superintendent or an official designee(s) within five (5) work days following the written determination's release. If no appeal is filed, the determination shall become final after five (5) work days. Both parties shall receive written notice of any appeal and both shall have the opportunity to submit written statements either in support of or challenging the written determination. The Superintendent shall have up to ten (10) work days to arrange for and hold a meeting with the parties. Following the meeting, the Superintendent shall have ten (10) work days to provide a written decision to the parties. The Superintendent may 1) affirm the written determination; 2) overturn the written determination, or 3) send the report back to the investigator for additional investigation. The Superintendent's decision to affirm or overturn the report is final.
 - 13.3.1 **Grounds for appeal.** There are three grounds for appeal and other asserted grounds shall not be considered. A party's appeal must state the grounds for appeal and facts supporting those grounds in order to be considered.
 - 13.3.1.1 Procedural irregularity that affected the outcome of the grievance process;
 - 13.3.1.2 New evidence that was not reasonably available at the time the determination regarding the existence of a policy violation was made that could affect the outcome of the grievance process; and/or
 - 13.3.1.3 The Title IX/Non-Discrimination Coordinator, the investigator, or the decision-maker had a conflict of interest or bias that affected the outcome of the grievance process.
- 14.0 **Engaging in Retaliation.** It shall be a violation of this policy for any person to retaliate against a person who alleges sexual harassment or who testifies, assists or participates in a grievance process or any other proceeding relating to sexual harassment allegations. A violation of this anti-retaliation provision may occur regardless of whether the underlying complaint of sexual harassment is substantiated. Allegations of retaliation arising under this policy shall be addressed through this policy's grievance process.

15.0 **Making a False Report.** Any person who knowingly makes a false report of sexual harassment shall be subject to disciplinary action in accordance with applicable District policies. Standing alone, the outcome of a grievance process is insufficient evidence of a false report.

16.0 **Reporting to Federal or State Agency.** In addition to, or as an alternative to, filing a formal complaint pursuant to this policy, a person may file a complaint with the U.S. Department of Education, Office for Civil Rights, or the Colorado Civil Rights Division at the addresses below:

Denver Office
Office for Civil Rights
U.S. Department of Education
Federal Building
1244 Speer Boulevard, Suite 310
Denver, CO 80204-3582
Telephone: 303-844-5695
TDD: 303-844-3417
Fax: 303-844-4303
Email: OCR_Denver@ed.gov

Colorado Civil Rights Division
1560 Broadway, Suite 1050
Denver, CO 80202
Telephone: 303-894-2997 or
800-262-4845
Fax: 303-894-7830
TDD: 720-432-4294
Email: DORA_CCRDIntake@state.co.us

Questions or concerns about the District’s application of Title IX may be addressed to the Title IX/Non-Discrimination Coordinator, the District’s General Counsel, or the United States Department of Education, Office for Civil Rights (OCR_Denver@ed.gov).

LEGAL REFERENCES:

- 20 U.S.C. §1681
- 42 U.S.C. §2000e
- 34 C.F.R. Part 106
- C.R.S. 18-3-401
- C.R.S. 18-3-402
- C.R.S. 22-32-109 (1) (II)
- C.R.S. 24-34-301 et seq.
- C.R.S. 24-34-401 et seq.
- C.R.S. 24-34-601
- C.R.S. 24-34-602

CROSS REFERENCES:

- District Policies
- 1210
- 2100
- 4110
- 4140
- 5540
- 8400

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Most Recent Adoption: February 13, 2023