

3057 Title IX

Nondiscrimination. The school district does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates including in admission and employment. Inquiries about Title IX may be referred to the school district's Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights, or both. The school district's Title IX Coordinator may be contacted at Title IX Coordinator, PO Box 359 - 306 South Main Arlington, SD 57212, Lisa Parry, 605-983-5597. The school district's nondiscrimination policy and grievance procedures are included this policy, or can be accessed at: www.arlington.k12.sd.us. To report information about conduct that may constitute sex discrimination or make a complaint of sex discrimination under Title IX, please contact the Title IX Coordinator.

Publication Notice. The school district will include the following notice on its website and in each handbook, catalog, announcement, bulletin, application form, and other places as required by law:

The school district prohibits sex discrimination in any education program or activity that it operates and individuals may report concerns or questions to the Title IX Coordinator. The school district's Title IX policy, notice, and other information may be accessed at the following link: www.arlington.k12.sd.us

Retaliation Prohibited. Retaliation, including peer retaliation, is prohibited in the school district's education program or activity. If the school district has information about conduct that reasonably may constitute retaliation under Title IX, it may be required to treat it as an allegation of sex discrimination. Upon receiving a complaint alleging retaliation, the school district will initiate its grievance procedures or informal resolution process.

Definitions. As used in this policy, the following terms are defined as follows:

Complainant means an employee, a student, or a parent, guardian, or other individual with the legal right to act on behalf of a complainant who is alleged to have been subjected to conduct that could constitute sex discrimination, including sex-based harassment; or any other person who may have been subjected to sex discrimination when that person was participating or attempting to participate in the school district's education program or activity.

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

Consent for purposes of this policy means the willingness in fact for conduct to occur. An individual may, as a result of age, incapacity, disability, lack of information, or other circumstances be incapable of providing consent to some or all sexual conduct or activity. Neither verbal nor physical resistance is required to establish that an individual did not consent. School district officials will consider the totality of the circumstances in determining whether there was consent for any specific conduct. Consent may be revoked or withdrawn at any time.

Respondent means a person who is alleged to have violated the school district's prohibition on sex discrimination. When a sex discrimination complaint alleges that the school district's policy or practice discriminates on the basis of sex, the school district is not considered a respondent.

Sex-based harassment prohibited by this part is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex that is:

Quid pro quo harassment. An employee, agent, or other person authorized by the school district to provide an aid, benefit, or service under the school district's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

Hostile environment harassment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the school district's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- The degree to which the conduct affected the complainant's ability to access the school district's education program or activity;
- The type, frequency, and duration of the conduct;
- The parties' ages, roles within the school district's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct and the context in which the conduct occurred; and
- Other sex-based harassment in the school district's education program or activity.

Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;

Sex Offenses, Forcible—Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

- **Rape**—(Except Statutory Rape) The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Sodomy**—Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- **Sexual Assault With An Object**—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- **Fondling**—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

Sex Offenses, Non-forcible—(Except Prostitution Offenses) Unlawful, non-forcible sexual intercourse.

- **Incest**—Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
- **Statutory Rape**—Non-Forcible sexual intercourse with a person who is under the statutory age of consent

Dating violence meaning 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 shall be determined based on a consideration of the length and type of relationship and the frequency of interaction between the persons involved in the relationship;

Domestic violence meaning felony or misdemeanor crimes committed by a person who:

- Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the school district, or a person similarly situated to a spouse of the victim;
- Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- Shares a child in common with the victim; or
- Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction

Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

Response to Sex-based Harassment.

All Employees. All school district employees must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination, including sex-based harassment under Title IX.

Title IX Coordinator. The school district will designate and authorize at least one employee as the school district's "Title IX Coordinator," to coordinate the school district's efforts to comply with its responsibilities under Title IX and this policy. The superintendent or Title IX Coordinator is authorized to delegate specific duties to one or more designees.

For conduct that could constitute sex-based harassment, the Title IX Coordinator must take the following actions:

- Offer and coordinate supportive measures for the complainant and for the respondent;
- Notify the complainant or the individual who reported the conduct of the grievance procedures and, if appropriate, the informal resolution process.
- Take other appropriate steps to avoid the recurrence of sex discrimination and restore or maintain equal access to the school district's programs and activities.

Supportive Measures. The school district will provide supportive measures, as appropriate, in cases involving sex-based harassment. These measures may include but are not limited to: counseling; extending deadlines; increased supervision; no-contact directives; leaves of absence;

changes in class, work, or activities, regardless of whether there is a comparable alternative; and training and education programs related to sex-based harassment. Supportive measures may be continued, modified, or discontinued at the conclusion of any grievance process. Supportive measures will not be disclosed to anyone other than the person to whom they apply and others, including school officials, who need to know the supportive measures to implement them.

Requests to Modify Supportive Measures. A complainant or respondent may request modification or reversal of the school district's decision to provide, deny, change, or terminate supportive measures applicable to them. Requests must be made to the Title IX Coordinator in writing, and an impartial individual will review the request.

Students with Disabilities. If the complainant or respondent is a student with a disability, the Title IX Coordinator will consult with one or more members of the student's IEP or Section 504 team to determine compliance with those laws while implementing supportive measures and all other requirements of this policy and Title IX.

Emergency Removal. The school district is authorized to remove a respondent from the school district's education program or activity on an emergency basis, provided that the school district undertakes an individualized safety and risk analysis; determines that an imminent and serious threat to the health or safety of a complainant or other persons arising from the allegations of sex discrimination justifies removal; and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

Administrative Leave. The school district is authorized to place an employee respondent on administrative leave from employment responsibilities during the pendency of the school district's grievance procedures.

Informal Resolution. The school district may offer an informal resolution process unless the complaint includes allegations that an employee engaged in sex-based harassment of a student or informal resolution would be contrary to law. Prior to initiating informal resolution, the parties will be provided with notice of the allegations. Participation in informal resolution is voluntary, and any informal resolution will include consent from the complainant and respondent, the ability to withdraw from the process, and the right to resume the grievance process. If an agreement is reached, it precludes the parties from initiating or resuming the grievance process.

The informal resolution facilitator will not be the same person as the investigator or the decisionmaker in the school district's grievance procedures. Potential terms that may be included in an informal resolution agreement include but are not limited to restrictions on contact, restrictions on participation in programs or activities, and disciplinary sanctions.

If informal resolution is offered, the school district will maintain all evidence gathered, communications about the informal resolution process, and the agreement reached. This information will be disclosed to outside individuals only as permitted by law and if required to implement the requirements of the agreement or Title IX. If no agreement is reached, only relevant and permissible evidence received during the informal resolution process will be considered during the grievance process.

Grievance Procedures to Resolve Complaints of Sex Discrimination. Any person designated as Title IX Coordinator, investigator, or decision maker will not have a conflict of interest or bias for or against any party, generally or specifically. The decisionmaker may be the same person as the Title IX Coordinator or investigator.

Complaint. Complaints of sex-based harassment may only be made by a complainant; a parent, guardian, or other individual with the legal right to act on behalf of a complainant; or the Title IX Coordinator. Complaints of sex discrimination (excluding complaints of sex-based harassment) may be made by any person who was participating or attempting to participate in the school district's education program or activity at the time of the alleged sex discrimination.

Complaint by Coordinator. In the absence of a complaint made by any other individual, the Title IX Coordinator will determine whether to initiate a complaint of sex discrimination. The Title IX Coordinator must consider, at a minimum, the following factors:

- The complainant's request not to proceed with the initiation of a complaint;
- The complainant's reasonable safety concerns regarding the initiation of a complaint;
- The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
- The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- The age and relationship of the parties, including whether the respondent is an employee of the school district;

- The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
- The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and
- Whether the school district could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures.

If the Title IX Coordinator initiates a complaint, they will notify the complainant prior to doing so and address reasonable concerns about the complainant’s safety or the safety of others, including by providing supportive measures.

Consolidation of Complaints. The school district may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references in this section to a party, complainant, or respondent include the plural, as applicable.

Basic Procedures. This grievance procedure is governed by the following basic requirements:

- A respondent is presumed not responsible for the alleged sex discrimination until a determination is made at the conclusion of the grievance procedure;
- The school district will treat the complainant and respondent equitably throughout the grievance process;
- The school district will take reasonable steps to protect the privacy of individuals participating in the grievance process in a manner that does not restrict the parties from obtaining and presenting evidence, speaking to witnesses, consulting with family members or advisors, or otherwise participating in the grievance process;
- The District will use the following timelines for each complaint, but the Title IX Coordinator or designee may extend them as needed:

Major Stage	Target Duration (calendar days)
Completion of the school district’s decision whether to dismiss or investigate a complaint of sex discrimination	1-15
Investigation	1-30
Determination	1-30

Notice of Allegations. Upon initiation of the grievance procedure, the school district will provide notice of the allegations to the parties whose identities are known. The notice will include a copy of this policy; the parties involved in the incident(s); the conduct alleged to constitute sex discrimination; and the date(s) and location(s) of the alleged incident(s), if available. Retaliation is prohibited.

If the school district decides to investigate additional allegations of sex discrimination that are not included in the initial notice, the school district will provide notice of the additional allegations to the parties.

Complaint Investigation. The burden is on the school district to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred. The individual investigating and deciding the complaint will:

- Provide an equal opportunity for the parties to present fact witnesses and relevant and permissible evidence;
- Objectively review all evidence gathered through the investigation and determine what evidence is relevant and permissible;
- Provide each party with an accurate description of the relevant and permissible evidence, and upon request, copies of this evidence;
- Provide the parties a reasonable opportunity to respond to the evidence;
- Use a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility, but credibility will not be based upon any individual's status as a complainant, respondent, or witness; and
- Take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. For purposes of this paragraph, disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

Relevant and Permissible Evidence. The school district will consider relevant and permissible evidence. Relevant evidence is evidence related to the allegations of sex discrimination under investigation as part of the grievance procedure. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

Generally relevant evidence is permissible, but does not include:

- Evidence that is protected under a privilege as recognized by Federal or State law;
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional in connection with the provision of treatment to the party or witness unless the school district obtains that party's or witness's voluntary, written consent for use in this grievance procedures; and
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless that evidence is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude a determination that sex-based harassment occurred.

Determining Whether Sex Discrimination Occurred. The school district will:

- Use the preponderance of the evidence standard of proof, that it is more likely than not, to determine whether sex discrimination occurred;
- Use only relevant and permissible evidence to reach a determination;
- Notify the parties in writing of the determination whether sex discrimination occurred, including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable;
- If there is a determination that sex discrimination occurred, coordinate and provide remedies to restore equal access, coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions, and require the Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur;
- Not discipline a party, witness, or others participating in a school district's grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the school district's determination whether sex discrimination occurred.

Dismissal of a Complaint. A complaint of sex discrimination made through the grievance procedure may be dismissed for any of the following reasons:

- The school district is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in the school district's education program or activity and is not employed by the school district;
- The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the school district determines that without the complainant's withdrawn allegations, the remaining alleged conduct would not constitute sex discrimination even if proven;
- The school district determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint under this paragraph, the school district must make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, the school district will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the school district must also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

The school district will notify the complainant that a dismissal may be appealed and provide the complainant with an opportunity to appeal the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the school district must also notify the respondent that the dismissal may be appealed on the bases set out in this policy. Upon the dismissal of a complaint, at a minimum, the school district will:

- Offer supportive measures to the complainant, and offer supportive measures to the respondent if the respondent has been notified of the complaint;
- Require its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the school district's education program or activity.

Appeal. The school district will provide the parties the opportunity to appeal the decisionmaker's written determination or a dismissal of a complaint, on the grounds identified below. The school district will implement appeal procedures equally for the parties, including a reasonable and equal opportunity to make a statement in support of or challenging the outcome being appealed. Appeals under Title IX, like other comparable proceedings, will be handled consistent with the school district's general complaint policy.

Time for Appeal. Appeals may only be initiated by submitting a written Notice of Appeal to the superintendent within three (3) calendar days of the party's receipt of (1) the written determination of whether sex discrimination occurred from which the appeal is taken, or (2) the written dismissal of the complaint from which the appeal is taken.

Notice of Appeal Filed By Party. The Notice of Appeal must include (a) the name of the party or parties appealing, (b) the determination, dismissal, or portion thereof being appealed, and (c) a concise statement of the specific grounds (from the following subsection) upon which the appeal is based. A party's failure to timely submit a Notice of Appeal will be deemed a waiver of the party's right to appeal under this policy and Title IX.

Appeals of Dismissals. If a dismissal is appealed, the school district will provide notice of the allegations to the complainant and respondent if not provided previously.

Appeal Decision. The decisionmaker for the appeal will be an individual who did not take part in the investigation, determination, and/or decision to dismiss the complaint. The appeal decisionmaker will notify the parties of the result of the appeal and the rationale for the result.

Disciplinary Sanctions and Remedies. If it is determined that sex-based harassment occurred, the school district may impose disciplinary sanctions that may include suspension, expulsion, mandatory reassignment, adverse employment action up to and including termination, or any other actions regarding student behavior that are reasonably necessary to aid the student, further school purposes, or prevent interference with the educational process. Such actions may include counseling of students, parent conferences, referral to restorative justice practices or services, rearrangement of schedules, requirements that a student remain in school after regular hours to do additional work, restriction of extracurricular activity, or requirements that a student receive counseling, psychological evaluation, or psychiatric evaluation upon the written consent of a parent or guardian to such counseling or evaluation.

Superintendent Authorized to Contract. The board authorizes the Superintendent to contract for, designate, and appoint individuals to serve in the roles of the school district's investigator(s), decision-maker(s), informal resolution facilitator(s), or appellate decision-maker(s) as contemplated by this policy.

Recordkeeping. The school district will maintain the following documents for a period of at least seven years:

- For each complaint of sex discrimination, records documenting the informal resolution process or grievance procedures and the outcome.
- Records documenting the actions the school district took to meet its obligations under Title IX for any allegation of sex discrimination.
- All materials used to provide training as required by this policy. The school district will make these training materials available upon request for inspection by members of the public.

Adopted on: _____

Reviewed on: _____

Revised on: _____