

Book	Policy Manual
Section	100 Programs
Title	Discrimination/Title IX Sexual Harassment Affecting Staff
Code	104
Status	Active

## Legal

1. [43 P.S. 336.3](#)
2. [43 P.S. 951 et seq](#)
3. [34 CFR Part 106](#)
4. [20 U.S.C. 1681 et seq](#)
5. [29 U.S.C. 206](#)
6. [29 U.S.C. 621 et seq](#)
7. [29 U.S.C. 794](#)
8. [42 U.S.C. 1981 et seq](#)
9. [42 U.S.C. 2000e et seq](#)
10. [42 U.S.C. 2000ff et seq](#)
11. [42 U.S.C. 12101 et seq](#)
12. [U.S. Const. Amend. XIV, Equal Protection Clause](#)
13. [20 U.S.C. 1232g](#)
14. [34 CFR 106.44](#)
15. [34 CFR 106.45](#)
16. [34 CFR 106.71](#)
17. [34 CFR Part 99](#)
18. [34 CFR 106.30](#)
19. [34 U.S.C. 12291](#)
20. [20 U.S.C. 1092](#)
21. [34 CFR 106.8](#)
22. [Pol. 317](#)
23. [Pol. 317.1](#)
24. [Pol. 806](#)
25. [Pol. 824](#)
- 16 [PA Code 44.1 et seq](#)
- 18 [Pa. C.S.A. 2709](#)
- 28 [CFR 35.140](#)
- 28 [CFR Part 41](#)
- 29 [CFR Parts 1600-1691](#)
- [EEOC Enforcement Guidance on Harris v. Forklift Sys., Inc., November 9, 1993](#)
- [EEOC Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 18, 1999](#)
- [EEOC Policy Guidance on Current Issues of Sexual Harassment, March 19, 1990](#)
- [Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 \(1998\)](#)
- [Faragher v. City of Boca Raton, 524 U.S. 775 \(1998\)](#)
- [Pol. 320](#)
- [Pol. 815](#)
- [Pol. 832](#)

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### **Authority**

The Board declares it to be the policy of this district to provide to all persons equal access to all categories of employment in this district, regardless of race, color, age, creed, religion, sex, 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.[1][2][3][4][5][6][7][8][9][10][11]

The Board encourages employees and third parties who believe they or others have been subject to discrimination to promptly report such incidents to designated employees.

The Board directs that verbal and written complaints of discrimination shall be investigated promptly, and appropriate corrective action be taken when allegations are substantiated. The Board directs that any complaint of discrimination brought pursuant to this policy shall also be reviewed for conduct which may not be proven discriminatory under this policy but merits review and possible action under other Board policies.[12][13][14]

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.

The Board directs that the foregoing statement of Board policy be included in each student and staff handbook, and that this policy and related administrative regulations be posted to the district's website.

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.

### **Reports of Title IX Sexual Harassment and Other Discrimination and Retaliation**

The Board encourages employees and third parties who believe they or others have been subject to Title IX sexual harassment, other discrimination, or retaliation to promptly report such incidents to the building principal or building administrator. A person who is not an intended victim or target of discrimination but is adversely affected by the offensive conduct may file a report of discrimination.

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

The complainant or the individual making the report may use the Discrimination/Sexual Harassment/Retaliation Report Form attached to this policy 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 administrative regulations followed.

The building principal or building administrator shall promptly notify the Title IX Coordinator of all reports of discrimination, Title IX sexual harassment or retaliation. The Title IX Coordinator 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 shall consider the complainant's wishes with respect to supportive measures.

The Title IX Coordinator shall conduct an assessment to determine whether the reported circumstances are most appropriately addressed through the Discrimination Complaint Procedures prescribed in administrative regulations to this policy, or if the reported circumstances meet the definition of Title IX sexual harassment and are most appropriately addressed through the Title IX Sexual Harassment Procedures and Grievance Process for Formal Complaints in administrative regulations, or other Board policies.

#### Disciplinary Procedures when Reports Allege Title IX Sexual Harassment

When a report alleges Title IX sexual harassment, disciplinary sanctions may not be imposed until the completion of the grievance process for formal complaints outlined in administrative regulations. 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 grievance process for formal complaints, 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.

#### **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 administrative regulations and the district's legal and investigative obligations. [\[13\]](#)[\[14\]](#)[\[15\]](#)[\[16\]](#)[\[17\]](#)

#### **Retaliation**

The Board prohibits retaliation by the district or any other person against any person for: [\[16\]](#)

1. Reporting or making a formal 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 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 immediately if they believe retaliation has occurred.

#### **Definitions**

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

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

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

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 work performance, including when: [\[9\]](#)

1. Submission to such conduct is made explicitly or implicitly a term or condition of an employee's status; or
2. Submission to or rejection of such conduct is used as the basis for employment-related decisions affecting an employee; or
3. Such conduct is sufficiently severe, persistent or pervasive that a reasonable person in the complainant's position would find that it unreasonably interferes with the complainant's performance at work or otherwise creates an intimidating, hostile, or offensive working environment such that it alters the complainant's working conditions.

#### Definitions Related to Title IX Sexual Harassment

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. [\[15\]](#)[\[18\]](#)

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. [\[18\]](#)

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: [\[18\]](#)

1. Counseling or Employee Assistance Program.
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 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.

Title IX sexual harassment means conduct on the basis of sex that satisfies one or more of the following: [\[18\]](#)

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: [\[19\]](#)

- 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. [\[19\]](#)
- 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. [\[20\]](#)
- 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: [\[19\]](#)
- 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. 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. [\[14\]](#)[\[15\]](#)[\[18\]](#)

### **Delegation of Responsibility**

In order to maintain a program of nondiscrimination practices that is in compliance with applicable laws and regulations, the Board designates the Assistant to the Superintendent or designee as the district's Compliance Officer and Title IX Coordinator. All nondiscrimination notices or information shall include the position, office address, telephone number and email address of the Compliance Officer.

The Compliance Officer shall publish and disseminate this policy and complaint procedure at least annually to students, parents/guardians, employees and the public to notify them of where and how to initiate complaints under this policy.

The Compliance Officer and Title IX Coordinator 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, as appropriate:

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.

The building principal or supervisor shall be responsible to promptly complete the following duties upon receipt of a report of discrimination or retaliation from employees or third parties:

1. If the building principal or supervisor is the subject of the complaint, refer the complainant to the Compliance Officer to carry out these responsibilities.
2. Inform the employee or third party about this policy including the right to an investigation of both verbal and written complaints of discrimination.
3. Provide relevant information on resources available in addition to the school complaint procedure such as making reports to the police, available assistance from domestic violence and rape crisis programs, and community health resources including counseling resources.
4. Immediately notify the Compliance Officer of the complaint. The Compliance Officer shall assess whether the investigation should be conducted by the building principal, another employee, the Compliance Officer or an attorney and shall promptly assign the investigation to that individual.
5. After consideration of the allegations and in consultation with the Compliance Officer and other appropriate individuals, promptly implement interim measures as appropriate to protect the complainant and others as necessary from violation of this policy during the course of the investigation.

## **Guidelines**

### **Title IX Sexual Harassment Training Requirements**

The Compliance Officer and Title IX Coordinator, 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 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 training materials shall be posted on the district's website.

## **Disciplinary Consequences**

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.[22][23][24][25]

## **Reports of Discrimination**

Any reports of discrimination that are reviewed by the Title IX Coordinator and do not meet the definition of Title IX sexual harassment but are based on race, color, age, creed, religion, sex, sexual orientation, ancestry, genetic information, national origin, marital status, pregnancy or

handicap/disability shall follow the Discrimination Complaint Procedures in administrative regulations to this policy.

### **Reports of Title IX Sexual Harassment**

Any reports deemed by the Title IX Coordinator to meet the definition of sexual harassment under Title IX shall follow the Title IX Sexual Harassment Procedures and Grievance Process for Formal Complaints in administrative regulations to this policy.

### **Complaint Procedure – Employee/Third Party**

#### **Step 1 – Reporting**

An employee or third party who believes s/he has been subject to conduct by any student, employee or third party that constitutes a violation of this policy is encouraged to immediately report the matter to the building principal or supervisor. Any person with knowledge of conduct which may violate this policy is encouraged to immediately report the matter to the building principal or supervisor.

If the building principal or supervisor is the subject of a complaint, the employee or third party shall report the incident directly to the Compliance Officer. The complainant or reporting employee may be encouraged to use the district's report form, available from the building principal, supervisor or Compliance Officer, or to put the complaint in writing; however, oral complaints shall be accepted, documented and the procedures of this policy implemented. The person accepting the verbal or written complaint may provide factual information on the complaint and the investigative process, the impact of choosing to seek confidentiality and the right to file criminal charges. In all other respects, the person accepting the complaint shall handle the report objectively, neutrally and professionally, setting aside personal biases that might favor or disfavor the complainant or those accused of a violation of this policy.

#### **Step 2 – Investigation**

The Compliance Officer shall ensure that the individual assigned to investigate the complaint has an appropriate understanding of the relevant laws pertaining to discrimination issues and this policy and how to conduct investigations.

The investigator shall work with the Compliance Officer to assess the anticipated scope of the investigation, who needs to be interviewed and what records may be relevant to the investigation.

The investigator shall conduct an adequate, reliable and impartial investigation. The complainant and the accused may suggest additional witnesses and provide other evidence during the course of the investigation. When the initial complaint involves allegations relating to conduct which took place outside of school or school-sponsored activities, the investigation may include inquiries related to these allegations to determine whether they resulted in continuing effects such as harassment in school settings.

The investigation may consist of individual interviews with the complainant, the accused, and others with knowledge relative to the allegations. The investigator may also evaluate any other information and materials relevant to the investigation. The person reporting the alleged discrimination, parties, parents/guardians and witnesses shall be informed of the prohibition against retaliation for anyone's participation in the process and that conduct believed to be retaliatory should be reported. All individuals providing statements or other information or participating in the investigation shall be instructed to keep the matter confidential and to report any concerns about confidentiality to the investigator.

If the investigation reveals that the conduct being investigated may involve a violation of criminal law, the investigator shall promptly notify the Compliance Officer, who shall promptly inform law enforcement authorities about the allegations.[13][20][21]

The obligation to conduct this investigation shall not be negated by the fact that a criminal or child protective services investigation of the allegations is pending or has been concluded. The investigator should coordinate with any other ongoing investigations of the allegations, including agreeing to requests for a short delay in fulfilling the district's investigative responsibilities during the fact-finding portion of a criminal or child protective services investigation. Such delays shall not extend beyond the time necessary to prevent interference with or disruption of the criminal or



child protective services investigation.

### Step 3 – Investigative Report

The investigator shall prepare and submit a written report to the Compliance Officer within twenty (20) days of the initial report of alleged discrimination, unless the nature of the allegations, anticipated extent of the investigation or the availability of witnesses requires the investigator and the Compliance Officer to establish a different due date. The parties shall be notified of the anticipated date the investigative report will be completed and of any changes to the anticipated due date during the course of the investigation.

The report shall include a summary of the investigation, a determination of whether the complaint has been substantiated as factual, the information and evaluation that formed the basis for this determination, whether the conduct violated this policy and any other violation of law or Board policy which may warrant further district action, and a recommended disposition of the complaint. An investigation into discriminatory harassment or sexual harassment shall consider the record as a whole and the totality of circumstances in determining whether a violation of this policy has occurred, recognizing that persistent and pervasive conduct, when taken together, may be a violation even when the separate incidents are not severe.

The complainant and the accused shall be informed of the outcome of the investigation, for example, whether the investigator believes the allegations to be founded or unfounded, within a reasonable time of the submission of the written report. The accused shall not be notified of the individual remedies offered or provided to the complainant.

### Step 4 – District Action

If the investigation results in a finding that some or all of the allegations of the complaint are established and constitute a violation of this policy, the district shall take prompt, corrective action designed to ensure that such conduct ceases and that no retaliation occurs. The district shall promptly take appropriate steps to prevent the recurrence of the prohibited conduct and to address the discriminatory effect the prohibited conduct had on the complainant and the school or school program environment. District staff shall document the corrective action taken and, where not prohibited by law, inform the complainant. The Compliance Officer shall follow up by assessing the effectiveness of the corrective action at reasonable intervals.

If an investigation results in a finding that a different law or Board policy was violated separately from or in addition to violations of this policy, or that there are circumstances warranting further action, such matters shall be addressed at the conclusion of this investigation or through disciplinary or other appropriate referrals where further evaluation or investigation is necessary.

Disciplinary actions shall be consistent with Board policies and administrative regulations, district procedures, applicable collective bargaining agreements, and state and federal laws.

## **Appeal Procedure**

1. If the complainant or the accused is not satisfied with a finding made pursuant to the policy or with recommended corrective action, s/he may submit a written appeal to the Compliance Officer within fifteen (15) days. If the Compliance Officer investigated the complaint, such appeal shall be made to the Superintendent.
2. The individual receiving the appeal shall review the investigation and the investigative report and may also conduct or designate another person to conduct a reasonable supplemental investigation to assess the sufficiency and propriety of the prior investigation.
3. The person handling the appeal shall prepare a written response to the appeal within twenty (20) days. Copies of the response shall be provided to the complainant, the accused and the investigator who conducted the initial investigation.

[104-AR-0-Discrimination-SexualHarassment-RetaliationReportForm.pdf \(101 KB\)](#)

[104-AR-1-DiscriminationComplaintProcedures.pdf \(136 KB\)](#)

[104-AR-2-TitleIXSexualHarassmentProceduresandGrievanceProcessforFormalComplaints.pdf \(239 KB\)](#)