Nondiscrimination on the Basis of Sex Under Title IX Including Sex-Based Harassment

Policy Information

Series A - Foundations and Commitments

Nondiscrimination on the Basis of Sex Under Title IX Including Sexual Harassment

Policy # ACA-R

FILE: ACA-R

NONDISCRIMINATION ON THE BASIS OF SEX UNDER TITLE IX
INCLUDING SEX-BASED HARASSMENT

I. The Bourne Public School's obligation to respond under Title IX requires the District to be aware of discrimination based upon sex, including sex-based harassment. The District has actual notice when an allegation is made known to any school employee. Schools must treat seriously all reports of sexual discrimination, including sex based harassment, that meet the definition of harassment and the conditions of actual notice and jurisdiction as noted whether or not the complainant files a formal complaint.

Title IX Sexual Discrimination applies to conduct that occurs within the United States in an education program or activity of the District, regardless of whether such District program or activity is conducted on or off school grounds. Additionally, under Title IX, the District has an obligation to address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States. A District education program or activity includes locations, events, or circumstances over which the District exercised substantial control over both the respondent and the context in which the sexual harassment occurred.

II. Designation of a Title IX Coordinator, Responsibilities & Training

(1) Title IX Coordinator. The District shall designate and authorize at least one employee, referred to herein as a Title IX Coordinator, to coordinate its efforts to comply with its responsibilities under Title IX. In the event the District designates more than one Title IX Coordinator, it must designate one of its Title IX Coordinators to retain ultimate oversight over those responsibilities and ensure the District's consistent compliance with its responsibilities under Title IX.

The Title IX Coordinator is responsible for coordinating the District's compliance with its obligations under Title IX and when notified of conduct that reasonably may constitute sex discrimination under Title IX is required to take actions to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects, pursuant to Title IX 106.44(f), in part by:

(i) Treating the complainant and respondent equitably;

(ii) Offering and coordinating supportive measures, as appropriate, for the complainant and if the grievance procedures have been initiated or an informal resolution process has been offered, for the respondent as well.

(iii) Notifying parties of the grievance procedure and the informal resolution process if available and appropriate;

(iv) Initiating the grievance procedure or the informal resolution process if available, appropriate and agreed to by all parties;

(v) In the absence of a complaint or the withdrawal of any or all of the allegations in a complaint, and in the absence or termination of an informal resolution process, determining whether to initiate a complaint of sex discrimination that complies with the grievance procedures. To make this fact-specific determination, the Title IX Coordinator must consider, at a minimum, the following factors:

(1) The complainant's request not to proceed with initiation of a complaint;

(2) The complainant's reasonable safety concerns regarding initiation of a complaint;

(3) The risk that additional acts of sex discrimination would occur if a complaint is not initiated;

(4) 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;

(5) The age and relationship of the parties, including whether the respondent is an employee of the District;

(6) The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;

(7) The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and

(8) Whether the District could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures

If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other person, or that the conduct as alleged prevents the recipient from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a complaint.

(vi) If initiating a complaint under paragraph (v) above of this section, notifying the complainant prior to doing so and appropriately addressing reasonable concerns about the complainant's safety or the safety of others, including by providing supportive measures;

(vii) Regardless of whether a complaint is initiated, taking other appropriate prompt and effective steps, in addition to steps necessary to effectuate the remedies provided to an individual complainant, if any, to ensure that sex discrimination does not continue or recur within the recipient's education program or activity. Parental, family, or marital status; pregnancy or related conditions.

The Title IX Coordinator shall coordinate actions on behalf of the District to promptly and effectively prevent sex discrimination and ensure equal access to the District's education program or activity pursuant to the provisions of Title IX, § 106.40 once a student, or a person who has a legal right to act on behalf of the student, notifies the Title IX Coordinator of the student's pregnancy or related conditions. These actions shall include

(i) Informing the student, and if applicable, the person who notified the Title IX Coordinator of the student's pregnancy or related conditions and has a legal right to act on behalf of the student, of the District's obligations under paragraphs Title IX, §§ 106.40(b)(1) through (5), § 106.44(j) and providing the District's notice of nondiscrimination.

(ii) Providing reasonable modifications to the District's policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to the District's education program or activity. Each reasonable modification must be based on the student's individualized needs following consultation with the student.to determine what modifications are required. A modification is not reasonable if the District can demonstrate that it would fundamentally alter the nature of its education program or activity.

The student has discretion to accept or decline each reasonable modification; if a student accepts a recipient's offered reasonable modification, the District is obligated to implement it.

Reasonable modifications may include, but are not limited to, breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom; intermittent absences to attend medical appointments; access to online or homebound education; changes in schedule or course sequence; extensions of time for coursework and rescheduling of tests and examinations; allowing a student to sit or stand, or carry or keep water nearby; counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access; or other changes to policies, practices, or procedures.

(iii) Providing the student voluntary access to any separate and comparable portion of the District's education program or activity.

(iv) Providing the student a voluntary leave of absence from the District's education program or activity to cover, at minimum, the period of time deemed medically necessary by the student's licensed healthcare provider. If the student qualifies for leave under a leave policy maintained by the District that allows a greater period of time than the medically necessary period, the student may take voluntary leave under that policy instead if the student so chooses. When the student returns to the District's education program or activity, the student must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began.

(v) Providing the student access to a lactation space, which must be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.

(vi) Not requiring supporting documentation under paragraphs (ii) through (v) above unless the documentation is necessary and reasonable for the District to determine the reasonable

modifications to make or whether to take additional specific actions under paragraphs (ii) through (v) above

(vii) Treating pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions with respect to any medical or hospital benefit, service, plan, or policy the recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's education program or activity.

(viii) Not requiring a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in the recipient's class, program, or extracurricular activity unless:

- The certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;
- The recipient requires such certification of all students participating in the class, program, or extracurricular activity; and
- The information obtained is not used as a basis for discrimination prohibited by this part.

(2) Delegation to designees. As appropriate, the District may delegate, or permit the Title IX Coordinator to delegate, specific duties to one or more designees.

(3) Training.

The District must ensure that the persons described in paragraphs (A) through (D) below receive training related to their duties under Title IX promptly upon hiring or change of position that alters their duties under Title IX and annually thereafter. This training must not rely on sex stereotypes.

A. All employees.
All employees must be trained on:
(i) The District's obligation to address sex discrimination in its education program or activity;

(ii) The scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment; and

(iii) All applicable notification and information requirements in response to reports of sexual discrimination and pursuant to the District's Title IX Grievance Procedure.

B. Investigators, decisionmakers, and other persons who are responsible for implementing the District's grievance procedures or have the authority to modify or terminate supportive measures.
In addition to the training requirements in paragraph A. above, all investigators, decisionmakers, and other persons who are responsible for implementing the District's grievance procedures or have the authority to modify or terminate supportive measures must be trained on the following topics to the extent related to their responsibilities:

(i) The District's obligations to respond to sexual discrimination under Title IX § 106.44;

(ii) The District's grievance procedures;

(iii) How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and

(iv) The meaning and application of the term ‘‘relevant’’ in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under Title IX.

C. Facilitators of informal resolution process.
In addition to the training requirements in paragraph A. above, all facilitators of an informal resolution process must be trained on the rules and practices associated with the District's informal resolution process and on how to serve impartially, including by avoiding conflicts of interest and bias.

D. Title IX Coordinator and designees.
In addition to the training requirements in paragraphs A. through C. above, the Title IX Coordinator and any designees must be trained on their specific responsibilities as set forth in paragraph (1) above and the requirements of the District's recordkeeping system.

III. Receipt of Complaint

The Superintendent in consultation with the Title IX Coordinator shall designate the principal of each school in the district, or their designee (or some other appropriate employee(s)) as the initial entity to receive a sex discrimination complaint, including sexual and sex-based harassment. The Title IX Coordinator shall be informed, as soon as possible, of the filing of the complaint. Nothing in the District's policy shall prevent any person from reporting the prohibited conduct to someone other than those above designated complaint recipients. The investigating officer may receive the complaint orally or in writing, and the investigation shall be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances and in compliance with applicable law. The investigation will be prompt, thorough, and impartial, and will include, at least, a private interview with the person filing the complaint and with witnesses. Also, the alleged harasser will be interviewed. When the investigation is completed, the complaint recipient will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.

IV. Notification Requirements and Confidential Employees

All non-confidential employees are required to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX.

(1) The District shall notify all participants in the District's education program or activity of how to contact its confidential employees, if any.

(2) The District shall require a confidential employee to explain to any person who informs the confidential employee of conduct that reasonably may constitute sex discrimination under Title IX:

(i) The employee's status as confidential for purposes of Title IX, including the circumstances in which the employee is not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination;

(ii) How to contact the recipient's Title IX Coordinator and how to make a complaint of sex discrimination; and

(iii) That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the grievance procedures.

A confidential employee is:

(1) An employee of the District whose communications are privileged or confidential under Federal or State law. The employee's confidential status, for purposes of this part, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;

(2) An employee of the District whom the recipient has designated as confidential under this part for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services.

V. Students With Disabilities

In the course implementing supportive measures, informal resolution, and/or a grievance procedure, and throughout the same, if either a complainant or respondent is an elementary or secondary student with a disability, the Title IX Coordinator must consult with one or more members, as appropriate, of the student's Individualized Education Program (IEP) team, 34 CFR 300.321, if any, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision under 34 CFR 104.35(c), if any, to determine how to comply with the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

VI. Emergency Removal & Administrative Leave

1. The District may remove a respondent from the District's education program or activity on an emergency basis, provided that the District undertakes an individualized safety and risk analysis, determines that an imminent and serious threat to the health or safety of a complainant or any students, employees, 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. This provision shall not be construed to modify any rights under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.,* Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, or the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*

2. The District may place an employee respondent on administrative leave from employment responsibilities during the pendency of the District's grievance procedures. This provision shall not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, or the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq*.

VII. Use of Supportive Measures

Supportive Measures are individualized services reasonably available that are non punitive, non-disciplinary, and not unreasonably burdensome to the Complainant or Respondent, while designed to ensure equal educational access, protect safety, and/or deter sexual discrimination

Supportive Measures may be offered before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Supportive measures are individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party, while designed to ensure equal educational access, protect safety, and/or deter sexual discrimination.

Supportive measures available to complainants and respondents include but are not limited to: counseling; extensions of deadlines or other course-related adjustments; modifications of work or class schedules; campus escort services; mutual restrictions on contact between the parties; changes in work locations; leaves of absence; increased security and monitoring of certain areas of the building and/or campus; and other similar measures. Violations of the restrictions imposed by supportive measures may be considered a violation of school rules and may also be considered in determining whether sexual discrimination has occurred.

VIII. Grievance Procedure

Allegations of conduct that meet the definition of sexual discrimination, including sex-based harassment under Title IX will be addressed through the Title IX Sexual Discrimination Grievance Procedure. Allegations of conduct that meet the definition of sexual discrimination, including sex-based harassment under Title IX, and simultaneously meet the definitions of sexual harassment under Title VII of the Civil Rights Act of 1964 (employees), M.G.L. c. 151B (employees), and/or M.G.L. c. 151C (students), will also be addressed through the Title IX Sexual Discrimination Grievance Procedure.

The District's Title IX Grievance Procedure is available at: [Title IX Grievance Procedure].

Allegations of conduct that do not meet the definition of sexual discrimination, including sex based harassment under Title IX, but could, if proven, meet the definition(s) of sexual harassment under Title VII (employees), M.G.L. c. 151B (employees), and/or M.G.L. c. 151C (students), will be addressed through the District's Civil Rights Grievance Procedure. (See exception under Section II, Part 4, Step 4 below). The definitions of sexual harassment under Title VII, M.G.L. c. 151B, and M.G.L. c. 151C are set out in the Civil Rights Grievance Procedure.

IX. Informal Resolution

After a Formal Complaint is filed, and prior to determining whether sex discrimination occurred, the District may, at its discretion, opt to offer and facilitate informal resolution options, such as mediation or restorative justice. Both parties must give voluntary, informed, written consent to attempt any offered informal resolution. Any informal resolution under this Procedure will be facilitated by trained personnel.

(1) The informal resolution process is not available to resolve allegations that an employee engaged in sex-based harassment of a student or if such a process would conflict with Federal, State or local law.

(2) The informal process is voluntary, and the respondent may terminate or decline any informal process at any time and resume the Formal Complaint grievance process. The District, as a condition of participation, must not require the parties to waive the right to an investigation and determination of a complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or the exercise of any other right.

(3) The informal process shall not exceed thirty (30) calendar days, during which time the timelines of the Formal Complaint process will be stayed.

X. Due Process and Fairness

The District shall provide due process protections which include the following:

1) Equitable treatment of complainants and respondents.

2) Presumption that the respondent is not responsible until a determination is made.. 3) Prompt timeframes for all major stages.

4) Reasonable steps to protect privacy of parties and witnesses during the grievance

5) Objective evaluation of relevant evidence and the exclusion of impermissible evidence. 6) If the District adopts procedures that apply to the resolution of only some complaints, articulate principles for how the District will determine which procedures apply. 7) Notice of allegations to the parties containing sufficient details to permit a party to prepare for any initial interview and proceed with a factual investigation. 8) Permitted dismissals in certain circumstances so long as the District offers an appeal and, as appropriate, supportive measures, and takes other steps to ensure sex discrimination does not continue or recur.

9) Permitted consolidation of complaints in certain circumstances.

10) Burden on the District to gather evidence and decide what is relevant or impermissible. 11) Equal opportunity for the parties to present fact witnesses and other evidence. 12) Equal opportunity for the parties to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence (and if the District provides access to a description, it must provide access to the underlying evidence upon the request of any party); a reasonable opportunity to respond; and a requirement that the District take reasonable steps to prevent and address unauthorized disclosures.

13) A process for assessing credibility when credibility is in dispute and relevant. 14) Use of a preponderance of the evidence standard of proof to determine whether sex discrimination occurred, unless the clear and convincing evidence standard is used in all other comparable proceedings, in which case that standard may be used. 15) The decision maker shall not be the same person as the Title IX Coordinator or investigator unless the District otherwise provides for the same in the Grievance Procedure and specifically sets forth under what circumstances a

single-investigator model may be used.
16) The facilitator for any informal resolution process shall not be the same person as the investigator or the decisionmaker in the District's grievance procedures. 17) The decisionmaker for any appeal shall not have taken part in an investigation of the allegations or dismissal of the complaint;
18)If it is determined that sex discrimination occurred, remedies for the complainant or others; disciplinary sanctions for those found responsible; and other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur..
19) Title IX Coordinators, investigators, and decision-makers must be free from bias or conflict of interest;
20) Equal opportunity for parties to appeal, where an appeal is offered; 21) Upon filing a formal complaint the school must give written notice to the parties containing sufficient details to permit a party to prepare for any initial interview and proceed with a factual investigation. For K-12 schools a hearing is optional but the parties must be allowed to submit written questions to challenge each other's credibility before the decision-maker makes a determination. After the investigation, a written determination must be sent to both parties explaining each allegation, whether the respondent is responsible or not responsible, including the facts and evidence on which the conclusion was based by applying either the preponderance of the evidence or the clear and convincing standard; however, a school can use the lower preponderance standards only if it uses that standard for conduct code violations that do not involve sexual harassment but carry the same maximum disciplinary sanction. As long as the process is voluntary for all parties, after being fully informed and written consent is provided by both parties, a school may facilitate informal resolution of a sexual complaint.
22) An informal investigation process that may, upon the request of the complainant, be followed by a formal process.

XI. Record Keeping

The District shall create records in accordance with its obligations under Title IX as noted below and maintain the same for a period of seven (7) years:
(1) For each complaint of sex discrimination, records documenting the informal resolution process and/or the grievance procedures and the resulting outcome. (2) For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or records documenting the actions the District took to meet its obligations under Title IX. (3) For all training all materials used to provide training to meet its obligations under Title IX. A District must make these training materials available upon request for inspection by members of the public.

SOURCE: MASC July 2024

Approved 11/6/24