



Capital School District

Board of Education Policy

Section: Human Resources
Title: Title IX Policy
Policy #: 500-28
Date Approved: 2/18/2026
Date Revised: 1/21/2026

Title IX Sexual Harassment Policy for all Students, Employees and Third Parties

1. Notice of Nondiscrimination

The Capital School District (“District”) is committed to providing an educational and employment environment that is free from Sexual Harassment as required by Title IX of the Education Amendments of 1972.¹

The District does not discriminate against any employee, applicant for employment, or student, on the basis of actual or perceived Sex, including Sexual Harassment. For complaints associated with sex discrimination, see policy #500-21: District Discrimination Policy.

To ensure compliance with federal, state, and local laws and regulations, and to affirm its commitment to promoting the goal of fairness in all aspects of the Education Program or Activity, the District has developed policies and procedures that provide a prompt, equitable, and impartial resolution of allegations of Sexual Harassment.

2. Title IX Coordinator

The District has appointed the Title IX Coordinator,² to coordinate the District’s compliance with Title IX.

Title IX Coordinator
Damien Burke
Chief Operating Officer
District Office

Capital School District
c/o: Damien Burke, Title IX Coordinator
198 Commerce Way
Dover, DE 19904

Office: 302-857-4252
TitleIX@capital.k12.de.us
damien.burke@capital.k12.de.us
<https://www.capital.k12.de.us/>

¹ 34 C.F.R. Part 106

² All references to “Title IX Coordinator” in this document refer to the Title IX Coordinator or their designee.

3. Title IX Mandatory Reporting

All District employees are Title IX Mandatory Reporters, as such they must promptly report all known details of actual or suspected Sexual Harassment to the Title IX Coordinator.

The District can also assist in contacting law enforcement if the impacted individual would like to file a police report about criminal conduct. In some cases, the District's response may be altered or briefly delayed by a law enforcement investigation, but a law enforcement investigation does not substitute for the District's response.

Title IX mandatory reporting is required in addition to all other mandatory reporting obligations of staff. This policy does not alter any other reporting obligations of staff.

4. Scope

The Policy applies to all Students, Employees, and other individuals participating in or attempting to participate in the District's program or activities, including education and employment.

The Policy prohibits Sexual Harassment in both employment and access to educational opportunities. For purposes of this policy, "Sex" includes birth sex; an individual's immutable biological classification as either male or female. Retaliation is also prohibited.

Nothing in this Policy is intended to infringe upon or limit a person's right to free speech, or rights under the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, or the Individuals with Disabilities in Education Act (IDEA).

5. Jurisdiction

The Policy applies to the District's Education Programs and Activities (including locations, events, or circumstances in which the District exercises substantial control over both the Respondent and the context in which the conduct occurred).

This Policy may also apply to the effects of out-of-school misconduct, including online conduct, that limit or deny a person's access to District's Education Programs or Activities.

For disciplinary action to be taken under this Policy, the Respondent must be a District Student or Employee at the time of the alleged incident, or, if a third-party contractor, fall under the District's disciplinary jurisdiction by way of agreement with their employer. A Complainant must be participating or attempting to participate in the District's Education Program or Activity at the time of signing a Formal Complaint unless the Title IX Coordinator determines it is necessary to sign a Formal Complaint on the Complainant's behalf.

6. **Prohibited Conduct**

All offense definitions below encompass actual and/or attempted offenses.

A. Title IX Sexual Harassment:

Title IX Sexual Harassment, as an umbrella category, includes the offenses of Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking. This definition applies to all Formal Complaints that fall within Title IX jurisdiction as determined by the Title IX Coordinator.

Sexual Harassment includes:

Conduct on the basis of Sex, or that is sexual in nature, that satisfies one or more of the following:

- 1) **Quid pro Quo:** a School/District employee explicitly or impliedly conditioning the provision of an aid, benefit, or service of the School/District on a person's participation in unwelcome sexual conduct.
- 2) **Sexual Harassment (Hostile Environment):** Unwelcome conduct, determined by a reasonable person, to be so severe, and pervasive, and objectively offensive that it effectively denies a Complainant equal access to the School/District's program or activity.
- 3) **Sexual Assault:**
 - A. **Rape:** Penetration, no matter how slight, of the vagina or anus of a person, with any body part or object, or oral penetration of a sex organ of the Complainant, or by the Respondent's sex organ, or by a sex-related object without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental or physical incapacity.
 - B. **Fondling:** The intentional touching of the clothed or unclothed genitals, buttocks, groin, breasts, or other body parts of the Complainant by the Respondent; or the intentional touching by the Complainant of the Respondent's clothed or unclothed genitals, buttocks, groin breasts, or other body parts; without the consent of the Complainant, for the purpose of sexual degradation, sexual gratification, or sexual humiliation.³
 - C. **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Delaware law.

³ Contact with private body parts (e.g., genitals, buttocks, groin, breasts) is considered to be done for the purpose of sexual degradation, sexual gratification, or sexual humiliation unless: (1) the contact can be proven inadvertent; (2) the contact is for a legitimate medical (or other privileged) purpose and thus is conduct for which consent should have been sought and obtained by the provider; (3) the contact involves a Respondent who is pre-sexual, based on maturity/age (thus their intent is not sexual); (4) the contact involves a Respondent who cannot developmentally understand sexual contact or that their contact is sexual; or (5) The contact is something like butt-slapping on a team and is both minimal and unlikely to have sexual motivation or purpose, as shown by the context of the act(s).

D. **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.

- 4) **Dating Violence:** violence, on the basis of Sex, committed by a person who is or has been in a relationship of a romantic or intimate nature with the Complainant, and includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - A. The existence of such a relationship shall be determined based on a consideration of the following factors: (1) The length of the relationship; (2) The type of relationship; and (3) The frequency of interaction between the persons involved in the relationship.
- 5) **Domestic Violence:** violence on the basis of Sex committed by a person who:
 - A. Is a current or former spouse or intimate partner of the Complainant or a person similarly situated to a spouse of the Complainant under the family or domestic violence laws of <<State>>;
 - B. Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
 - C. Shares a child in common with the Complainant; or
 - D. Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of <<State>>.
- 6) **Stalking:** engaging in a course of conduct, on the basis of Sex, directed at a specific person that would cause a Reasonable Person to:
 - A. Fear for the person's safety or the safety of others; or
 - B. Suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

B. Consent, Force, Incapacitation, and Violence

As used in this Policy, the following definitions and understandings apply:

- 1) **Consent:** knowing, voluntary, and clear permission by word or action to engage in sexual activity.
- 2) **Force:** the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual.
- 3) **Incapacitation:** where a Respondent knows (or should have known) a Complainant is incapable of giving consent as the result of a temporary or permanent physical or

mental health condition, physical restraint, and/or the use of substances that severely impact decision-making; or minors under the age of consent in Delaware.

- 4) **Violence:** intentionally or recklessly causing the Complainant physical, emotional, or psychological harm.⁴

7. Reports/Formal Complaints of Sexual Harassment

Reports or Formal Complaints of Sexual Harassment may be made at any time (including during non-business hours) using any of the following options:

- File a Formal Complaint with, or make a report to, the Title IX Coordinator. Such a Formal Complaint or report may be made by calling 302-857-4252, emailing TitleIX@capital.k12.de.us, or addressing postal mail to:
Capital School District
c/o: Damien Burke, Title IX Coordinator
198 Commerce Way
Dover, DE 19904
- Anonymous reports are accepted, but they may limit the District's ability to investigate, respond, and provide remedies, depending on what information is shared.

There is no time limitation on providing Reports/Complaints to the Title IX Coordinator. However, if the Respondent is no longer a Student or Employee and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

8. Resolution Procedures

Formal Complaints of Sexual Harassment under the Policy will be resolved through the Resolution Procedures accessible at the link below.

https://www.capital.k12.de.us/departments/human_resources

9. Standard of Evidence

⁴ When evaluating the presence of violence:

- Intent is evidenced when a Reasonable Person would be more likely to act with the purpose of causing serious harm rather than for any other reason
- Recklessness is evidenced by a disregard of obvious risk to the safety of the Complainant
- Legitimate use of violence for self-defense is not chargeable under the Policy because the purpose is safety, not harm. It may also be used as a defense if it is not clear at the time of charging whether the use of violence was for self-defense or not. Self-defense is only to be considered if it is prompted by physical violence or the threat thereof.
- Consensual use of violence, such as in kink relationships, would also not meet this definition, in most circumstances
- Threats to seriously harm the Complainant or people they care about may be chargeable under this definition if doing so causes serious emotional or psychological harm
- Threats to harm oneself, even if made to cause emotional or psychological harm, are not considered violence under this definition (but may be addressable under district policies).

The District uses the preponderance of the evidence standard of evidence when determining whether a Policy violation occurred. This means that the District will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent violated the Policy.

10. Supportive Measures

The District will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged Sexual Harassment. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to the District's Education Program or Activity, including measures designed to protect the safety of all Parties and/or the District's educational environment and/or to deter Sexual Harassment.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Education to the institutional community or community subgroup(s)
- Alternative placement
- Altering work arrangements for employees
- Safety planning
- Implementing contact restrictions (no contact orders) between the Parties
- Academic support, extensions of deadlines, or other class-related adjustments
- Class schedule or assignment modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the school
- Any other actions deemed appropriate by the Title IX Coordinator

11. Confidentiality/Privacy

The District makes every effort to protect the Parties' privacy, and will not disclose the names of the Complainant, Respondent, and witnesses except as allowed by, or to fulfill the purposes of, related laws and regulations (e.g., Title IX), the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law.

12. External Contact Information

Concerns about the District's application of the Policy and compliance with Title IX of the Education Amendments of 1972 may be addressed to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline: (800) 421-3481
Facsimile: (202) 453-6012
TDD: (877) 521-2172
Email: OCR@ed.gov

Web: <http://www.ed.gov/ocr>

For allegations of Employee-on-Employee misconduct, contact the Equal Employment Opportunity Commission (EEOC).

13. Policy Revision

The Title IX Coordinator regularly reviews and updates the Policy and procedures. The District reserves the right to make changes to this document as necessary.

This Policy is applicable to alleged incidents occurring on or after August 14, 2020. For alleged incidents of Sexual Harassment occurring prior to August 14, 2020, the offense definitions of the policy in place at the time of the alleged incident apply, and the District will use the procedures in place at the time of the report.

If laws or regulations change or court decisions alter policy or procedural requirements in a way that impacts this document, this document will be construed to comply with the most recent laws, regulations, or court holdings. A change required by a court or government order could occur during an active investigation or resolution process. If that happens, the District reserves the right to adjust the Policy and Procedures accordingly and notify the Parties of any necessary mid-process changes. This could include entirely replacing the Policy or associated procedures, which could necessitate restarting an investigation or resolution process. The District will make every effort to minimize the impact on the Parties as much as possible if changes are unavoidable.

This document does not create legally enforceable protections beyond the protections of the background federal and state laws that frame such policies and codes, generally.