WASHINGTONVILLE CSD

TITLE IX TRAINING MATERIALS

The District Policies

There are multiple policies that address both New York State and federal anti-discrimination laws.

- Title VI – Race, Ethnicity, Nationality and Religion
- Title VII - Nondiscrimination/Equal Opportunity
- Title IX – Sex and Gender Based Discrimination
- The Dignity for All Students Act (DASA)
- The New York State Human Rights Law

The District's Policies

- Due to overlap among the several laws and policies, at the outset of investigation an analysis should be done to determine who should investigate and if a coordination of investigators would be necessary:
- Identify the anti-discrimination issue(s) and determine who the Board appointed investigators are. [review BOE resolutions]
- Conduct coordinated investigations if applicable

Discrimination Against Students

- When a matter of discrimination involving a student is brought forward it will necessarily and immediately involve a Dignity for All Student's Act ("DASA") investigation and would be coupled with:

- Title VI or Title IX

[Note: The New York State Human Rights Law now applies to student such that it makes actionable discrimination in educational settings. The District uses the DASA Policy in this regard.]

What Makes Title IX Different

- Title IX of the Elementary and Secondary School Act of 1972 prohibits sex-based discrimination in federally funded school programs with respect to both access to programs and gender equality in employment.

- The emphasis of regulatory changes effectuated in 2020 were aimed primarily at college-level interactions but have the profound effect of making complex the due process in elementary and secondary schools.

The District's Title IX Policy for Students

- The Definition of Sexual Harassment under Title IX includes:
- *Quid Pro Quo Sexual Harassment* – whereby an aid, benefit or service provided by the district is conditioned upon unwelcome sexual conduct; and/ or
- *Hostile Environment Sexual Harassment* -- that is so severe, pervasive and objectively offensive it that effectively denies equal access to district programs or activities; and/or
- *Acts of sexual assault, dating violence, domestic violence, stalking* – all of which are sexual harassment *per se*.

The District's Title IX Policy for Students

- The Limited Jurisdiction of Title IX (less extensive than DASA)

  The alleged conduct must occur in a location over which the district exercises substantial control over both the alleged harasser and the context in which the alleged harassment occurs.

- Website Notice Requirement: How to report events of sexual harassment through mail, telephone or email to a Title IX Coordinator

The District's Title IX Policy for Students

- Students may report alleged incidents of sexual harassment involving an officer, employee, student, business invitee, volunteer or visitor to any Title IX Coordinator.
- The Title IX Coordinator shall then promptly conduct an intake interview of the student to determine if the matter should be referred to a formal Title IX Grievance Process.
- The Coordinator shall explain the options for going forward that include: [1]informal complaint verbally or in writing; [2] formal complaint verbally or in writing;[3] informal mediation process or [4] merely placing the district on notice of the objectionable conduct.

The District's Title IX Policy for Students

- INFORMAL COMPLAINTS involve situations where the district has knowledge of an act of sexual harassment and a complaint has not been filed or when the Complainant doesn't file a formal complaint or files an informal complaint not alleging a violation of Title IX:
- The Title IX Coordinator must issue a written report to the Superintendent within ten (10) days, and
- The Superintendent shall take appropriate action that may include referring the matter for treatment as a Formal Complaint.

The District's Title IX Policy for Students

- FORMAL COMPLAINTS must be received in writing or reduced to writing if orally received by the Title IX Coordinator who shall personally or by reference to a trained board of education approved Title IX formal complaint investigator ("Investigator") conduct a full and fair investigation.
- [Note: The Title IX Coordinator may also serve as the Title IX Investigator]
- No disciplinary actions or punitive remedies against the Respondent to the Formal Complaint may be implemented until the investigation has been completed. [Note: Under 3214 this means proposed suspensions are envisioned]

The District's Title IX Policy for Students

FORMAL COMPLAINT PROCESSING

- Initiated by a Complainant - the student or parent or guardian or by the Title IX Coordinator. Done in writing or reduced to writing & signed.
- The Title IX Coordinator then makes a critical determination – would the allegations if proven meet the definition of sexual harassment within the meaning of Title IX?
- If the Title IX Coordinator determines that it is not a Title IX matter, a written notice to that effect must be issued to the Complainant.

The District's Title IX Policy for Students

DISMISSAL OF COMPLAINTS BEFORE INVESTIGATION IS CONCLUDED

Dismissal is Mandatory IF:

- Alleged facts, even if proven, would not rise to the level of a violation
- Alleged incident(s) did not occur within the school's program or activity over which the District had substantial control

OR

- Alleged incident(s) did not occur in the USA

Dismissal is Permitted IF:

- Respondent's employment or enrollment in the District ends
- There are substantial barriers to collection of evidence needed to make a determination
- The Complainant wishes to withdraw the Complaint (which may nevertheless be pursued at the Title IX Coordinator's discretion)

The District's Title IX Policy for Students

WHEN A VIABLE TITLE IX COMPLAINT IS DETERMINED BY THE TITLE IX COORDINATOR – THE GRIEVANCE PROCESS IS COMMENCED

Notice of the Mandatory Grievance Process must be given to the Complainant and the Respondent that sets forth: [1] The details of the alleged violation(s); [2]presumption of the Respondent's innocence; [3] right of each party to legal counsel; [4] rights of each party to inspect, review and rebut all evidence; [5] the parties' rights to receive the determination upon the conclusion of the Grievance Process; [6] new allegations to be merged or separately reviewed; [7] that the Code of Conduct prohibits false statements and malicious allegation; [8] each party's right to present and discuss evidence with the Investigator and [9] the District's Burden of Proof *by a preponderance of the credible evidence.*

The District's Title IX Policy for Students

- At the conclusion of the investigation, the Investigator must provide all parties [the Complainant(s) and Respondent(s)] equal opportunity to review all evidence gathered at least ten (10) days before the date of intended completion of the Investigator's Report, submit written relevant questions for the other side, and provide responses to any such questions.
- The Investigator must then prepare a report that fairly summarizes all relevant evidence gathered for submission to the district's DECISION MAKER, and the parties must be allowed ten (10) more days to submit any comments prior to such issuance.

[Note: the Decision Maker may not serve as the Complaint Officer or the Investigator]

The District's Title IX Policy for Students

- The role of the Decision Maker is to review the Investigator's report and any rebuttal issued by the parties, determine the relevance of the evidence presented, and make findings of fact as well as a determination of whether the policy has been violated, applying the preponderance of credible evidence standard.
- The Decision Maker then prepares a Final Report which must include a summary of the allegations, the procedures followed in response to the complaint, findings of fact supporting determinations, appropriate remedies, and information about appeals procedure and the prohibition on retaliation, issuing the same to all parties.

The District's Title IX Policy for Students

- APPEALS FROM THE DECISION MAKER'S DETERMINION are reviewed by the district's appellate authority.
- Most policies designates the Superintendent of Schools as the appellate authority.
- Grounds for Appeals to the Supt: [1] procedural infirmity; [2] newly discovered evidence that could affect the outcome; or [3] a conflict of interest on the part of the Coordinator, Investigator or Decision Maker deemed to have affected the outcome.

The District's Title IX Policy for Students

- What if the Title IX Coordinator Dismisses a complaint, how should an appeal be made?
- *Answer: An appeal may be brought within 30 calendar days of the dismissal to the Superintendent (the Appellate Authority).*
- CONFIDENTIALITY RULES: It is expected that at all levels confidentiality shall be protected to the maximum extent possible regarding all aspects of the proceedings and processes.
- Respondent must be told the identify of the Complainant in order to assure fair and due process.

The District's Title IX Policy for Students

- CONSQUENCES FOR VIOLATIONS OF THE TITLE IX POLICY:
- Include corrective actions in the nature of discipline up to and including termination from employment or student suspension from instruction and privilege activities under the Code of Conduct.

The Novelty of the Regulations

A Right to Equitable Treatment

The grievance process does not favor either the complainant or the respondent While interim supportive measures may be offered to a complainant during the pendency of the grievance process, these may not be punitive or unduly burdensome to a respondent, except if an emergency removal is warranted by an immediate threat to physical health or safety of any individual or group. Any disciplinary sanctions may be imposed only after completion of the grievance process and a determination regarding responsibility for alleged conduct.

The Novelty of the Regulations

- A RIGHT TO LEGAL COUNSEL AT ALL STAGES OF THE PROCEEDINGS

The Novelty of the Regulations

A RIGHT TO DUE PROCESS

The law requires a presumption of innocence, and no respondent may be deemed guilty of allegations prior to the completion of a full and fair investigation and review of the evidence by a neutral decision-maker. The burden of proof rests with the district, not either party, and requires a preponderance of evidence to establish any allegation. A preponderance of evidence means that credible testimony and evidence supports a finding that it is more likely than not that an allegation is true.

The Novelty of the Regulations

A Right to Objectivity and Fairness

All parties have a right to have their side of the story heard by an impartial investigator who is free from conflicts of interest. District personnel and contractors who are engaged to fulfill duties attendant to the Title IX grievance process shall be trained about bias and the need to recuse one's self from any matter in which s/he has a conflict of interest.

The Novelty of the Regulations

All parties have a right to an equal opportunity to present all **relevant** evidence, both inculpatory and exculpatory, for objective consideration, and to review any evidence submitted, even if it will not be relied upon for a determination, prior to the issuance of a final investigative report to the decision maker. According to the regulations, evidence or questions regarding a complainant's prior sexual behavior or sexual predisposition is **not relevant** and may not be considered **unless** it could establish that the specific alleged conduct was not consensual or another person committed the alleged specific conduct.

QUESTIONS?