SHAWNEE MISSION

SCHOOL DISTRICT

ADMINISTRATOR ANNUAL TITLE IX TRAINING

August 26, 2026

- Overview of Title IX and Board Policy AC
- Definition of “Sexual Harassment” under Title IX
- Responding to Reports of Sexual Harassment
- Grievance Process
- Retaliation
- Understanding Title IX Terms: Relevance, Bias, Stereotypes, Conflict of Interest, and types of Sexual Harassment

Title IX Overview

- Title IX protects people from discrimination based on sex in education programs or activities that receive federal financial assistance.
- School District must operate its education program or activity in a nondiscriminatory manner free of discrimination based on sex
- Key areas in which recipients have Title IX obligations are:
  - Athletics
  - Sex-based harassment, which encompasses sexual assault and other forms of sexual violence
    - Discipline for sex-based harassment
  - Treatment of LGBTQI+ students
  - Employment

Title IX Regulations - Training Requirements

- "A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment …, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process …, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias."
- "A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence."
- "Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment."
- "All materials used to train Title IX Coordinators, investigators, decisionmakers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website…."

Board Policy AC
(Non-Discrimination/Non-Harassment Policy)

Training

The District will provide annual training to employees on identifying and reporting acts that may constitute discrimination, harassment or retaliation. The Compliance Coordinator, designated investigators, designated decision-makers, designated appeal officer, and any District administrators who are designated to facilitate informal resolution processes, will receive additional annual training on this policy and implementation of the grievance process.

Non-Discrimination/Non-Harassment Laws

See List in Policy AC

Prohibition of Discrimination, Harassment, and Retaliation

Amended Title IX Regulations (May 2020)

- Focuses on Sexual Harassment as a Form of Sex-Based Discrimination
  - Sexual harassment, including sexual assault, is unlawful sex discrimination - means that recipients are legally obligated to address and prevent sexual harassment and assault as part of their commitment to providing a safe and equitable learning environment
  - Provides requirements for how schools must respond to sexual harassment under Title IX so that every complainant receives appropriate support, respondents are treated as responsible only after receiving due process and fundamental fairness, and school officials serve impartially without bias for or against any party
- Supporting Complainants & Respecting Complainants' Autonomy
  - Schools must offer free supportive measures to every alleged victim of sexual harassment, even if they do not want to participate in the grievance process
  - Gives complainants control over the school-level response, and respects complainants' wishes and autonomy by giving them the clear choice to file a formal complaint, separate from the right to supportive measures

Amended Title IX Regulations

- Focuses on Due Process and Fairness
  - Complainants and respondents must have strong, clear procedural rights in a predictable, transparent grievance process designed to reach reliable outcomes.
  - Provided numerous specific requirements for the investigation process, including providing both parties written notice of the allegations, an equal opportunity to select an advisor of the party's choice (who may be, but does not need to be, an attorney), and an equal opportunity to submit and review evidence throughout the investigation

- Preservation of Free Speech Rights
  - Directs schools not to violate First Amendment rights when complying with Title IX (*i.e.*, exercise of 1st Amendment rights does not constitute retaliation)

“Sexual Harassment” under Title IX

1. A school employee conditioning an educational benefit or service upon a person’s participation in unwelcome sexual conduct (often called “quid pro quo” 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 the school’s education program or activity; or

3. Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a)

Scope of Responsibility to Respond

- Sexual harassment by or against students or staff – anyone "participating in or attempting to participate in the education program or activity of the [school district]."

- "Education program or activity" = not just on campus or at school
  - Locations, events, or circumstances where a school exercises substantial control over the context of the harassment and the person accused of committing the harassment
  - At school, on a school bus, on a field trip, at a school-sponsored activity

Scope of Responsibility to Respond

- School must respond when it has “actual knowledge” of conduct that could constitute sexual harassment

- “Actual Knowledge” = notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any official who has authority to institute corrective measures, or to any employee of an elementary and secondary school
  - School staff member personally observes
  - School staff member is put on notice (by anyone – victim, witness, parent, etc.) that a student/employee may be a victim of sexual harassment

Reporting Sexual Harassment

- School must respond in a manner that is not “deliberately indifferent”
  - Take complaints and reports seriously, do not ignore
- Immediately report to the Compliance Coordinator (Rob Shackelford and/or Addison Prather)
  - Do not attempt to investigate [see Slide re: Protocol for Cooperatively Responding to Sexual Offenses against Children]
- Policy AC reporting responsibility:

  All District employees share in the responsibility of preventing and responding to discrimination, harassment, and retaliation. All employees who personally observe conduct that could constitute discrimination, harassment, or retaliation, or who are notified about an allegation of discrimination, harassment, or retaliation, or about conduct or events reasonably suggesting that such conduct has occurred, are required to immediately report the conduct to the Compliance Coordinator. Additionally, employees who observe discrimination, harassment, or retaliation are expected to intervene to stop the conduct in situations in which they have supervisory control and it is safe to do so.

Other Reporting Responsibilities

- Reasonable cause to suspect that child abuse or neglect has occurred ➡️ report to Department for Children and Families (DCF)

- Reason to believe that the conduct constituted the commission of a felony or misdemeanor, involved the possession of a weapon or drugs, or resulted in or was substantially likely to have resulted in serious bodily injury to others ➡️ report to law enforcement
  - See slide re: Protocol for Cooperatively Responding to Sexual Offenses against Children

Protocol for Cooperatively Responding to Sexual Offenses against Children

- Between Johnson County and Wyandotte County school districts, local law enforcement agencies, Sunflower House, District Attorney Offices, and DCF

1. School District Report Sex Offense and Pause Questioning and Investigation to Allow Local Law Enforcement to Collect Minimal Facts and to Allow Sunflower House to Conduct a Forensic Interview
2. Parties Discuss Consequences of Concurrent Investigations
3. Parties Discuss Consequences of Concurrent Investigations and Options with Parent/Guardian of Child Victim
4. Opportunity for School District to View/Inspect Recording of Sunflower House Interview of Child Victim
5. District Attorney Review of Submitted Concurrent Investigation Cases

Overview of the Grievance Process

- Report of conduct that could constitute Title IX sexual harassment is made
- Title IX Coordinator will provide direction regarding offering supportive measures and info. about Policy AC
- If formal complaint is filed, then investigator will gather relevant evidence, interview the parties, and interview witnesses.
  - Discipline related to sexual harassment is stayed until investigation and completion of the grievance process when a formal complaint is filed.
- Investigator will prepare a written report summarizing the relevant evidence.
- Decision-maker will review the investigative report and evidence and make a determination regarding whether sexual harassment occurred.

Step 1: Compliance Officer offers Supportive Measures

- Title IX Coordinator (or designee) will promptly reach out to the complainant to discuss the availability of supportive measures
  - Supportive measures for students: separating or restricting contact between the parties; altering class schedules, passing periods, or class seating arrangements; offering counseling, social emotional programming or other supportive resources; providing additional supervision or monitoring for a student; placing an employee-respondent on leave during the pendency of an investigation; and assisting with filing criminal charges
  - Supportive measures for employees: separating or restricting contact between the parties; altering duties, work schedules, or work locations; placing an employee-respondent on leave during the pendency of an investigation; and assistance with filing criminal charges

Determining Supportive Measures

- Must be offered whether or not a formal complaint is filed
- Must be offered to the complainant, may also be offered to the respondent
- Parameters for Supportive Measures
  - Free, individualized services
  - Designed to restore or preserve equal access, protect safety, or deter further misconduct toward the complainant
  - Idea is to *support* the complainant, without being disciplinary or punitive to the respondent
  - Cannot unreasonably burden another person
  - Keep confidential to the extent possible

Step 2: Informal Resolution or Formal Complaint

- Compliance Coordinator will inform complainant of their right to participate in informal resolution or to proceed with the formal grievance process
  - Goal is to INFORM, and not to encourage or discourage either route
- Policy AC language regarding informal resolution:

  At any time during the grievance process before a determination is reached, the parties may be offered or request an informal resolution process, such as mediation or restorative justice, in lieu of a full investigation and determination, but in no event will informal resolution be facilitated to resolve a complaint of staff-on-student sexual harassment. In order for informal resolution processes to be implemented, all parties must voluntarily agree in writing. In the event that a resolution is reached during the informal resolution process and agreed to in writing by the parties, then the formal complaint will be dismissed….

Step 2: Informal Resolution or Formal Complaint

- A formal complaint begins the investigation process, during which a determination will be made as to whether the preponderance of the evidence shows that Policy AC was violated
- Where a complainant is unable for any reason to file a complaint, for example due to age or disability, a complaint may be filed by a parent, guardian, or representative on behalf of the complainant.
- Compliance Coordinator may sign a formal complaint and initiate the grievance process where the complainant elects not to file a complaint
- Complaints should be filed as soon as possible and no later than 180 calendar days after the complainant becomes aware of the alleged violation, unless the conduct is ongoing.

Who Serves the Roles in the Investigation Process?

Investigator

For formal complaints alleging student-on-student prohibited conduct - building principal, associate principal, athletic director, or administrative intern

For formal complaints alleging student-on-staff prohibited conduct - building principal from a school building that the student does not attend

For formal complaints alleging staff-on-staff prohibited conduct, staff-on-student prohibited conduct, and all other formal complaints - Human Resources Director or Human Resources Coordinator or designee

Decision-Maker

For formal complaints against student-respondents alleging sexual harassment under Title IX - a Director of Elementary or Secondary Services or designee

For formal complaints against staff-respondents alleging sexual harassment under Title IX and all other formal complaints implicating Title IX - Associate Superintendent of Human Resources or designee

Appeal Officer

Deputy Superintendent or designee.

Multi-Step Investigation Process

1. Written Notice: Investigator send written notice to the parties of the allegations, including the identities of the parties involved, the alleged prohibited conduct, and the date and location of the alleged incident.

2. Evidence Gathering and Review: Within 20 working days, the investigator gathers all relevant evidence and, as appropriate, provides the parties with copies of the evidence gathered. The parties have 10 working days to inspect, review, and respond to the evidence.

3. Preparation of Report: Within 30 working days of receiving the formal complaint, the investigator will conclude the investigation and create a report that summarizes the relevant evidence. The report will be sent by the C.C. to the parties for their review and written response and to the decision-maker.

4. Parties may respond to report: The parties will have 10 working days to submit a response to the investigator's report, including proposed relevant questions for the decision-maker to ask the other party and/or any witnesses.

Multi-Step Investigation Process

5. Review of Investigation by Decision-Maker: Decision-maker will review the investigation, including any of the following steps: review of the evidence gathered and investigation report, re-interviewing a party or witness, and gathering additional evidence if deemed necessary.
6. Decision by Decision-Maker: No later than 20 working days after receipt of the investigator's report, the decision-maker (or C.C.) simultaneously will issue to the parties the decision-maker's written determination as to whether the preponderance of the evidence shows that this policy was violated. The written determination to each party will include the following information as appropriate: identification of the allegations, a description of the procedural steps taken, findings of fact, conclusion regarding application of the student discipline code or policies/procedures applicable to employees to the facts, a concise statement of the rationale supporting the conclusion on each allegation, any disciplinary sanctions imposed on the respondent, what remedies will be instituted, and notice of the appeal procedure.
7. Appeal: A party may appeal to the following reasons: procedural irregularity that affected the determination, new evidence that was not reasonably available at the time the determination was made, or conflict of interest or bias on behalf of the Compliance Coordinator, investigator, or decision-maker. The appeal will review the investigation, and within 20 days, give written notice to the parties of their determination.

Dismissal of a Title IX Complaint

- Complaint MUST be dismissed if:
  - Conduct could not constitute sexual harassment even if proven (does not preclude responsive action under student discipline code, Board policies, and/or District procedures)
  - Conduct did not occur in an education program or activity
  - Conduct did not occur against a person in the United States

- Complaint MAY be dismissed if:
  - Complainant notifies the C.C. in writing that they want to withdraw the complaint
  - Respondent is no longer enrolled or employed by the District
  - Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the complaint or allegations

Remedying a Policy AC Violation

- Remedy: Prompt, effective, and appropriate action taken to restore or preserve equal access to education or employment programs and/or activities that is taken with the goal of preventing future recurrence of prohibited conduct and redressing the effects of prohibited conduct
- Remedies may have educational, restorative, rehabilitative, and/or punitive components.
- Remedies may include, but are not limited to: the same services provided as supportive measures; follow-up contact with a complainant; disciplinary sanctions or consequences against the respondent; additional training for students and/or employees; and data reviews, assessments, or climate checks

Discipline for Violations of Policy AC

- Discipline cannot be imposed (on student or staff) for sexual harassment <u>until after the completion of the grievance process</u>
  - Students: detention, loss of a privilege, parent and/or student conference, an alternative disposition agreement, in-school suspension, out-of-school suspension with or without probation, and expulsion with or without probation.
  - Employees: conference, written reprimand, required training or other measures, reassignment, unpaid leave, and termination
  - Parents, visitors, community members, contractors or others: may be prohibited from District property or otherwise restricted while on District property
- Title IX regulations provide for an "emergency removal" of a student respondent when school officials have performed an individualized safety and risk analysis and determined that the respondent is "*an immediate threat to the physical health or safety of any student or other individual*." When that determination is made, school officials must provide the student notice and an opportunity to immediately challenge the decision.

Retaliation Prohibited

- Retaliation = Intimidation, threats, coercion, or discrimination against a person based on the person engaging in a protected activity
    - Protected Activity: Making a complaint of prohibited discrimination or harassment, reporting prohibited discrimination or harassment, or participating in an investigation, formal proceeding or informal resolution, whether conducted internally or outside the District, concerning prohibited discrimination or harassment
- Complaints alleging retaliation may be filed under Policy AC.
- District must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA, as required by law, or to conduct any investigation, hearing, or judicial proceeding arising thereunder.

Relevance

- "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence
  - Can include questions about the who, what, when, where, and how of allegations
  - Can also include issues related to motive or bias
  - Includes both exculpatory and inculpatory evidence – evidence that is favorable and unfavorable to the parties

- PROTECTION for Complainant: Questions or evidence about a complainant's sexual predisposition or history is never relevant, except in 2 circumstances: (1) to prove that someone other than the respondent committed the conduct; and (2) prior sexual behavior with the respondent is offered to prove consent

Bias, Stereotypes, and Conflict of Interest

- Under Policy AC: “Investigations begin with presumptions that the respondent did not engage in any prohibited conduct, and that the complainant is credible.”
- Investigators and decision-makers cannot gather or evaluate evidence in a way that is based on stereotypes or that favors one party over the other
- Investigators and decision-makers must gather evidence impartially and must include relevant evidence that is both favorable and unfavorable to both parties.
- Standard is “preponderance of the evidence” = more likely than not that the respondent violated Policy AC
- Decision must be based on an objective evaluation of the evidence, and the report should describe the major rationale used to reach the decision

Quid Pro Quo Sexual Harassment

"Quid Pro Quo" = something for something

- "An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct."
  - Involves employees (teacher, coach, etc.)
  - Includes both express and implied situations
  - Does not need to be severe, or pervasive; can be one-time instance

Unwelcome Conduct Sexual Harassment

- "Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity."
  - Severe – is conduct extreme?
  - Pervasive – sufficient in number and continuous, generally means a one-time incident is not enough (could be if it impacts several individuals or is widespread – *i.e.*, "sexting" or sharing inappropriate photos to several people)
  - Objectively offensive - whether a reasonable person, in the position of the complainant, would find the conduct offensive
    - Reasonable person standard (from the complainant's perspective) considers factors such as: nature of the conduct, ages, abilities, and relative positions of authority of the individuals involved

- AND must effectively deny a person equal access to education program or activity (impact)
  - Skipping class to avoid harasser, decline in grades, difficulty concentrating, etc. Does not need to completely deny access, just deny equal access - does not require dropping out of school or failing class.

Sexual Assault, Dating Violence, Domestic Violence, Stalking (Clery Act and VAWA)

Any of these can be sexual harassment regardless of severity or the number of times they occur

- Sexual Assault: Any sexual act directed against another person, forcibly and/or against the person's will; or not forcibly or against the person's will when the victim is incapable of giving consent
  - Includes rape, statutory rape, fondling, or attempts to do the same
  - Could be an issue with voluntary sexual activities between students who are not of the age of consent (16 in Kansas)

- Dating Violence: Any act of 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 following factors: the length of the relationship; the type of the relationship; and the frequency of the interaction of the persons involved in the relationship.
  - Example: students are dating and an episode of violence has occurred

Sexual Assault, Dating Violence, Domestic Violence, Stalking (Clery Act and VAWA)

- Domestic Violence: Any felony or misdemeanor act of violence committed by a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; a person who is cohabitating with the victim or who has cohabited with the victim as a spouse or intimate partner; a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or; 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 this jurisdiction

- Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress
  - Could include online harassment that either causes a student to fear for safety or suffer substantial emotional distress.

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