

4.23 *Title IX: Sex-Based Discrimination & Prohibited Conduct*

4.23.1 Policy Objective

a. Statement of the Law

Title IX of the Education Amendments Act of 1972 (“Title IX”) provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” This includes discrimination affecting both students and employees.

b. The Board’s Expectations

The Board is committed to meeting the standards of Title IX and does not discriminate on any basis, including on the basis of sex, in its educational programs and activities.

The Board expects its students and employees to conduct themselves in a non-discriminatory manner, in accordance with Title IX, whether on campus or at a school-based activity off-campus. Title IX’s prohibition against sex-based discrimination includes harassment, unwelcome conduct, sexual assault, dating violence, domestic violence, and stalking. When conduct in violation of Title IX is reported, the District will ensure action is taken to:

- provide supportive services and resources to impacted students and employees;
- conduct a thorough and impartial investigation;
- communicate regularly with those involved in writing throughout the process; and
- promptly provide a written determination following completion of its investigation.

If the District finds a responding party to be responsible for the conduct alleged, in violation of this policy, sanctions up to and including expulsion or termination may be imposed.

4.23.2 Title IX Staff

The Board has authorized the Superintendent to designate the following Title IX Staff members:

a. Title IX Coordinator

The Title IX Coordinator shall oversee implementation and enforcement of this Policy, as well as compliance with applicable procurements, rules, and regulations. Reports, questions, or concerns regarding Title IX and potential instances of prohibited conduct may be directed to the Title IX Coordinator. The Title IX Coordinator shall also receive

complaints of prohibited conduct, coordinate investigations, and ensure adequate training.

Contact information for the Title IX Coordinator can be found on the district webpage, at the front office of each school, and will otherwise be made available to students, employees, and community members.

b. Title IX Investigators

Title IX Investigators will collect and review evidence, including witness statements, and prepare an investigative report. These persons will receive training from the Title IX Coordinator. Only one investigator will be assigned by the Title IX Coordinator for each individual complaint. Title IX Investigators will often be school-based personnel responsible for investigating other instances of student misconduct and will perform the Title IX investigative duties as needed.

c. Title IX Council

The Title IX Council will be a panel of Board employees who will review investigative reports and make responsibility determinations. These persons will receive training from the Title IX Coordinator. While the council may consist of several employees, only one council member will be assigned to render a decision in each case.

4.23.3 Scope of Policy

Title IX prohibits sex-based discrimination, including sexual harassment, whether against students or employees. Note that misconduct falling outside this policy may nonetheless violate other Board policies (such as the student code of conduct) and thus be otherwise subject to disciplinary action.

a. Educational Program or Activity

This Policy applies to all prohibited conduct against any person that occurs in the “*educational program or activity*” of the Board, including all of its schools, regardless of whether that program or activity takes place on or off campus. An “*educational program or activity*” includes locations, events, or circumstances over which the Board, through its schools and/or employees, exercise substantial control over both the alleged wrongdoer and the context in which the conduct occurred. This may include, for example, an incident that occurs off-campus at a school sponsored event such as a field trip, but must occur in the United States.

b. Covered Individuals

All students and employees are subject to this Policy.

4.23.4 Prohibited Conduct

A violation of this Policy occurs if a student or employee is found, more likely than not (i.e., by a preponderance of the evidence), to have engaged in any of the types of prohibited conduct defined below. This conduct is prohibited regardless of whether it is directed toward a student, employee, visitor, or other person.

a. Sexual Harassment

- Any instance of quid pro quo harassment by a school employee. Quid pro quo means “this for that” and, in this context, refers to situations where a school employee offers favorable treatment in exchange for submission to unwanted sexual advances. This includes both explicit and implicit harassment;

Example: Offering an educational opportunity or benefit to a student, like a higher grade, in exchange for a sexual favor. This is sexual harassment regardless of whether the student agrees to the request.

- Any unwelcome conduct that a reasonable person would find severe, pervasive, and objectively offensive such that it effectively denies equal educational access; or
- Any instance of sexual assault, dating violence, domestic violence, or stalking.

b. Sexual Assault

Any sexual act directed against another person, forcibly and/or against that person’s will; or not forcibly or against the person’s will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth). This offense includes the forcible rape of both males and females. Sexual assault may include, but is not limited to rape, fondling, incest, and statutory rape.

c. Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

d. Domestic Violence

Violence committed by a current/former spouse of the victim; person with whom the victim share a child in common; person who is cohabitating with or has cohabitated with the victim as spouse; or person similarly situated to a spouse of the victim.

e. Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her safety or the safety of others; or suffer substantial emotional distress. Stalking may be conducted directly or indirectly and may include,

but is not limited to, the following behaviors:

- Making unwanted phone calls, including hang-ups;
- Sending unsolicited or unwanted letters, emails, texts, or instant messages;
- Leaving unwanted items or presents;
- Following or spying on a person;
- Showing up or waiting at places where the victim will be without a legitimate reason;
- Posting information or spreading rumors about the victim on the internet in a public place, or by word of mouth.

f. Sex-Based Discrimination

Any conduct based on a person's sex, pregnancy, or gender that adversely affects a term or condition of that person's employment, education, or participation in an educational program/activity.

4.23.5 Reporting Prohibited Conduct

Any person (students, employees, parents/guardians, or other third parties) may report an instance of prohibited conduct, even if his or her knowledge of the incident is based on indirect information. Initial reports may be made in person, by mail, by telephone, by email, or by another means that results in actual receipt of the information by the Title IX Coordinator. Persons may also report potential prohibited conduct to any employee.

Employees, however, are mandatory reporters and are thus required to promptly report potential instances of prohibited conduct to the Title IX Coordinator. This requirement exists regardless of how the employee becomes aware of the potential violation or if the person providing the information to the employee requests confidentiality. Where a person requests confidentiality, the employee should inform them of the employee's obligation to provide all known information to the Title IX Coordinator. Note that the mandatory reporting designation does not supersede an employee's legal obligation to maintain confidentiality – such as a health care provider's obligation to keep medical information private.

While prompt reporting is encouraged, there is no time limit on reporting or filing complaints of violations of this Policy.

4.23.6 Grievance Procedure

The Superintendent is authorized to implement a grievance procedure that complies with the rules adopted by the United States Department of Education, and to amend those procedures when the Department of Education updates or amends its rules. Those

procedures should cover the following: complaint; investigation; decision; and appeal.

4.23.7 “Rape Shield” Protections

- a. Complainants are not required to divulge any medical, psychological, or similar privileged records.
- b. Prior sexual history of a party is generally irrelevant. An individual’s character or reputation with respect to prior sexual activity is not relevant and cannot be considered as evidence except in limited circumstances. These circumstances include where such history is necessary to explain the presence of a physical injury, or where prior sexual history between the parties may help explain the context of the parties’ relationship and has a bearing on whether consent was sought and given in the particular incident at issue.
- c. Evidence of a pattern of conduct by the respondent may be relevant, whether before or after the incident at issue, to prove a material fact. It may also have a bearing on assigning appropriate discipline.

4.23.8 Criminal or Civil Investigations

The policies and procedures outlined in this policy do not supersede applicable state or federal law. The grievance procedure outlined in the policy may be instituted for a violation of law that also violates this policy so long as both violations result from the same factual situation. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings.

4.23.9 Retaliation

The Board prohibits retaliation by its employees, students, or agents against any person who exercises their rights pursuant to this Policy or Title IX.

Retaliation is any act that has the effect of punishing a person for engaging in a protected activity, such as reporting prohibited conduct, filing a complaint under the Policy, and assisting or participating in any investigation. Examples of retaliatory acts include, but are not limited to, adverse employment actions or preventing a student from participating in a school-based activity. Retaliation may also include coercion, intimidation, or other harassment that would discourage a reasonable student, employee, or other person from filing a complaint regarding prohibited conduct or otherwise participating in an investigation under this Policy.

4.23.10 Withdrawal of a Complaint

A complainant may, at any time in the process, request to withdraw a complaint. The Title IX Coordinator will make the decision regarding whether to permit such

withdrawal, but will strongly consider the complainant's wishes.