BOARD POLICY

104 Discrimination/Harassment Affecting Staff

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Authority

The Board declares it to be the policy of this district to provide to all persons equal access to all categories of employment in this district, regardless of race, color, age, religious creed, religion, sex, sexual orientation, ancestry, national origin, marital status, genetic information, handicap/disability or pregnancy, childbirth or pregnancy-related medical conditions. The district shall make reasonable accommodations for identified physical and mental impairments that constitute disabilities, as well as pregnancy, childbirth and pregnancy-related conditions, consistent with the requirements of federal and state laws and regulations.[1][2][3][4][5][6][7][8][9][10][11][12][13][14][15]

The Board also declares it to be the policy of this district to comply with federal law and regulations under Title IX prohibiting sexual harassment, which is a form of unlawful discrimination on the basis of sex. Such discrimination shall be referred to throughout this policy as Title IX sexual harassment. Inquiries regarding the application of Title IX to the district may be referred to the Title IX Coordinator, to the Office for Civil Rights of the U.S. Department of Education, or both.

The Board directs that the foregoing statement of Board policy be included in each student and staff handbook, and that this policy and related attachments be posted to the district's website.

The Board requires a notice stating that the district does not discriminate in any manner, including Title IX sexual harassment, in any district education program or activity, to be issued to all students, parents/guardians, employment applicants, employees and all unions or professional organizations holding collective bargaining or professional agreements with the district. All discrimination notices and information shall include the title, office address, telephone number and email address of the individual(s) designated as the Compliance Officer and Title IX Coordinator.

Reports of Title IX Sexual Harassment and Other Discrimination and Retaliation

The Board encourages employees, applicants and third parties who believe they or others have been subject to Title IX sexual harassment, other discrimination or retaliation to promptly report such incidents to the building principal or Title IX Coordinator. A person who is not an intended victim or target of discrimination but is adversely affected by the offensive conduct may file a report of discrimination.

An employee serving in a supervisory position who suspects or is notified that a district employee may have been subject to conduct that constitutes a violation of this policy shall immediately report the incident to the Title IX Coordinator.

If the building principal is the subject of a complaint, the complainant or the individual making the report shall direct the report of the incident to the Title IX Coordinator.

If the Title IX Coordinator is the subject of a complaint, the complainant or building principal shall direct the report of the incident to the Superintendent or designee.

The complainant or the individual making the report may use the designated district report form attached to this policy for purposes of reporting an incident or incidents in writing; however, oral reports of an incident or incidents shall be accepted, documented and the procedures of this policy and the relevant attachments followed.

The building principal shall promptly notify the Title IX Coordinator of all reports of discrimination, Title IX sexual harassment or retaliation. The Title IX Coordinator shall promptly contact the complainant regarding the report to gather additional information as necessary, and to discuss the availability of supportive measures. The Title IX Coordinator shall consider the complainant’s wishes with respect to supportive measures.

The Title IX Coordinator shall conduct an assessment to determine whether the reported conduct is most appropriately addressed through the Discrimination Complaint Procedures prescribed in Attachment 2 to this policy, or if the reported conduct meets the definition of Title IX sexual harassment and is most appropriately addressed through the Title IX Sexual Harassment Procedures and Grievance Process for Formal Complaints in Attachment 3, or other Board policies.

Disciplinary Procedures when Reports Allege Title IX Sexual Harassment

When a report alleges Title IX sexual harassment, disciplinary sanctions may not be imposed until the completion of the grievance process for formal complaints outlined in Attachment 3. The district shall presume that the respondent is not responsible for the alleged conduct until a determination has been made at the completion of the grievance process for formal complaints.

Administrative Leave –

When an employee, based on an individualized safety and risk analysis, poses an immediate threat to the health or safety of any student or other individual, the employee may be removed on an emergency basis.

An accused, nonstudent district employee may be placed on administrative leave during the pendency of the grievance process for formal complaints, consistent with all rights under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, and in accordance with state law and regulations, Board policy and an applicable collective bargaining agreement or individual contract.

Confidentiality

Confidentiality of all parties, witnesses, the allegations, the filing of a report, and the investigation related to any form of discrimination or retaliation, including Title IX sexual harassment, shall be handled in accordance with applicable law, regulations, Board policy, the attachments and the district's legal and investigative obligations.[16][17][18][19][20]

Retaliation

The Board prohibits retaliation by the district or any other person against any person for:[19]

1. Reporting or making a formal complaint of conduct that may constitute discrimination or retaliation, including Title IX sexual harassment.

2. Testifying, assisting, participating in any manner or refusing to participate in a related investigation, process or other proceeding or hearing.

3. Acting in opposition to practices the person reasonably believes to be discriminatory.

The district, its employees and others are prohibited from intimidating, threatening, harassing, coercing, or discriminating against anyone for actions described above. Individuals are encouraged to contact the Title IX Coordinator immediately if they believe retaliation has occurred.

Definitions

Complainant shall mean an individual who is alleged to be the victim.

Pregnancy, childbirth and pregnancy-related medical conditions, as defined in federal law, refers to the pregnancy or childbirth of the specific employee and includes, but is not limited to, current pregnancy; past pregnancy or recovery; termination of pregnancy; potential or intended pregnancy (which can include infertility, fertility treatment and the use of contraception); labor; childbirth; and lactation. Related medical conditions are medical conditions relating to the pregnancy, termination of pregnancy, childbirth or lactation of the specific employee.[21]

Pregnancy, as defined in state regulation, shall include the use of assisted reproductive technology, the state of being in gestation, childbirth, breastfeeding, the postpartum period after childbirth and medical conditions related to pregnancy.[22]

Respondent shall mean an individual alleged to be the perpetrator of the discriminatory conduct.

Discrimination

Discrimination shall mean to treat individuals differently, or to harass or victimize based on a protected classification including race, color, age, religious creed, religion, sex, sexual orientation, genetic information, ancestry, national origin, marital status, pregnancy or handicap/disability.

Harassment is a form of discrimination based on the protected classifications listed in this policy, or association with an individual who has a protected classification, consisting of objectively and subjectively hostile conduct such as graphic, written, electronic, verbal or nonverbal acts including

offensive jokes or comments, slurs, stereotypes, epithets and name-calling, ridicule or mockery, insults or put-downs, offensive objects or pictures, physical assaults or threats, intimidation, ostracism, or other conduct that affects a term, condition or privilege of employment, and may be harmful or humiliating or interfere with a person's school or school-related work performance, including when:[10]

1. Submission to such conduct is made explicitly or implicitly a term or condition of an employee's status; or

2. Submission to or rejection of such conduct is used as the basis for employment-related decisions affecting an employee; or

3. Such conduct is sufficiently severe, persistent or pervasive that a reasonable person in the complainant's position would find that it unreasonably interferes with the complainant's performance at work or otherwise creates an intimidating, hostile, or offensive working environment such that it alters the complainant's working conditions.

Examples of **harassment** based on race, color, ancestry or national origin may include but not be limited to harassment regarding traits or characteristics related to an individual's name, cultural dress or diet, accent, linguistic characteristics or manner of speech, or physical characteristics, such as hairstyles or hair texture.

Harassment based on religion, religious creed, sex, pregnancy or related conditions, or handicap/disability may include harassment based on a request for or receipt of a reasonable accommodation.

Discrimination or harassment based on handicap/disability may also include harassment based on how an individual speaks, looks or moves, as well as discrimination or harassment because an individual is regarded as having an impairment, even if the individual does not have an actual disability; has a record or history of a disability, even if the individual does not currently have a disability; or is associated with an individual who has a disability.

Religious creed includes all aspects of religious observance, practice or belief.[23]

Race includes all of the following:[24]

1. Ancestry, national origin or ethnic characteristics.
2. Interracial marriage or association.
3. Traits associated with race, which includes but is not limited to, hair texture and protective hairstyles, such as braids, locks and twists.
4. Hispanic ancestry, national origin or ethnic characteristics.[22]
5. Persons of any other national origin or ancestry as specified by a complainant or in a complaint.

Definitions Related to Title IX Sexual Harassment

Formal complaint shall mean a document filed by a complainant or signed by the Title IX Coordinator alleging Title IX sexual harassment and requesting that the district investigate the allegation under the grievance process for formal complaints. The authority for the Title IX Coordinator to sign a formal complaint does not make the Title IX Coordinator a party in the grievance process for formal complaints. The phrase "document filed by a complainant" refers to a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.[18][25]

Supportive measures shall mean nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.[25]

Supportive measures shall be designed to restore or preserve equal access to the educational program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or to deter sexual harassment. **Supportive measures** may include, but are not limited to:[25]

1. Counseling or Employee Assistance Program.
2. Extensions of deadlines or other course-related adjustments.
3. Modifications of work or class schedules.
4. Campus escort services.

5. Mutual restrictions on contact between the parties.
6. Changes in work locations or other activities.
7. Leaves of absence.
8. Increased security.
9. Monitoring of certain areas of the campus.
10. Assistance from domestic violence or rape crisis programs.
11. Assistance from community health resources including counseling resources.

Title IX sexual harassment means conduct on the basis of sex that satisfies one or more of the following:[25]

1. A district employee conditioning the provision of an aid, benefit, or district service on an individual's participation in unwelcome sexual conduct, commonly referred to as *quid pro quo sexual 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 a district education program or activity.

3. Sexual assault, dating violence, domestic violence or stalking.

    a. ***Dating violence*** means 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 is determined by the following factors:[26]

        i. Length of relationship.

        ii. Type of relationship.

        iii. Frequency of interaction between the persons involved in the relationship.

    b. ***Domestic violence*** includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving federal funding, or by 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 the jurisdiction.[26]

    c. ***Sexual assault*** means a sexual offense under state or federal law that is classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.[27]

    d. ***Stalking,*** under Title IX means stalking on the basis of sex, for example when the stalker desires to date a victim. Stalking means to engage in a course of conduct directed at a specific person that would cause a reasonable person to either:[26]

        i. Fear for their safety or the safety of others.

        ii. Suffer substantial emotional distress.

Such conduct must have taken place during a district education program or activity and against a person in the United States to qualify as sexual harassment under Title IX. An **education program or activity** includes the locations, events or circumstances over which the district exercises substantial control over both the respondent and the context in which the harassment occurs. Title IX applies to all of a district's education programs or activities, whether such programs or activities occur on-campus or off-campus.[17][18][25]

Delegation of Responsibility

In order to maintain a program of nondiscrimination practices that is in compliance with applicable laws and regulations, the Board designates Anne Logue, the Director of Human Resources as the district's Compliance Officer and Title IX Coordinator. The Compliance Officer/Title IX Coordinator can be contacted at:[28]

Address: 2780 West Fourth Street, Williamsport PA 17701

Email: alogue@wasd.org

Phone Number: 570-327-5500 ext. 40210

The Compliance Officer and Title IX Coordinator shall fulfill designated responsibilities to ensure adequate nondiscrimination procedures are in place, to recommend new procedures or modifications to procedures and to monitor the implementation of the district's nondiscrimination procedures in the following areas, as appropriate:

1. Review - Review of personnel practices and actions for discriminatory bias and compliance with laws against discrimination to include monitoring and recommending corrective measures when appropriate to written position qualifications, job descriptions and essential job functions; recruitment materials and practices; procedures for screening applicants; application and interviewing practices for hiring and promotions; district designed performance evaluations; review of planned employee demotions, non-renewal of contracts, and proposed employee disciplinary actions up to and including termination.

2. Training - Provide training for supervisors and staff to prevent, identify and alleviate problems of employment discrimination.

3. Resources - Maintain and provide information to staff on resources available to alleged victims in addition to the school complaint procedure or Title IX procedures, such as making reports to the police, and available supportive measures such as assistance from domestic violence or rape crisis programs, and community health resources including counseling resources.

4. Reports/Formal Complaints - Monitor and provide technical assistance to individuals involved in managing informal reports and formal complaints.

Guidelines

Title IX Sexual Harassment Training Requirements

The Compliance Officer and Title IX Coordinator, investigator(s), decision-maker(s), or any individual designated to facilitate an informal resolution process related to Title IX sexual harassment shall receive the following training, as required or appropriate to their specific role:

1. Definition of sexual harassment.
2. Scope of the district's education program or activity, as it pertains to what is subject to Title IX regulations.
3. How to conduct an investigation and grievance process for formal complaints, including examination of evidence, drafting written determinations, handling appeals and informal resolution processes, as applicable.
4. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias.
5. Use of relevant technology.
6. Issues of relevance including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
7. Issues of relevance, weight of evidence and application of standard of proof and drafting investigative reports that fairly summarize relevant evidence.
8. How to address complaints when the alleged conduct does not qualify as Title IX sexual harassment but could be addressed under another complaint process or Board policy.

All training materials shall promote impartial investigations and adjudications of formal complaints of Title IX sexual harassment without relying on sex stereotypes.

All training materials shall be posted on the district's website.

Disciplinary Consequences

An employee who violates this policy shall be subject to appropriate disciplinary action consistent with the applicable Board policy, collective bargaining agreement and individual contract, up to and including dismissal and/or referral to law enforcement officials. [29] [30] [31] [32]

Reports of Discrimination

Any reports of discrimination that are reviewed by the Title IX Coordinator and do not meet the definition of Title IX sexual harassment but are based on race, color, age, religious creed, religion, sex, sexual orientation, ancestry, genetic information, national origin, marital status, pregnancy or handicap/disability shall follow the Discrimination Complaint Procedures in Attachment 2 to this policy.

Reports of Title IX Sexual Harassment

Any reports deemed by the Title IX Coordinator to meet the definition of sexual harassment under Title IX shall follow the Title IX Sexual Harassment Procedures and Grievance Process for Formal Complaints in Attachment 3 to this policy.

Legal Footnotes

[1] 43 P.S. 336.3
LEGAL REFERENCE

[2] 43 P.S. 951
LEGAL REFERENCE

[3] 34 CFR Part 106
LEGAL REFERENCE

[4] 20 U.S.C. 1681
LEGAL REFERENCE

[5] 29 U.S.C. 206
LEGAL REFERENCE

[6] 29 U.S.C. 621
LEGAL REFERENCE

[7] 29 U.S.C. 794
LEGAL REFERENCE

[8] 29 CFR Part 1636
LEGAL REFERENCE

[9] 42 U.S.C. 1981
LEGAL REFERENCE

[10] 42 U.S.C. 2000e
LEGAL REFERENCE

[11] 42 U.S.C. 2000ff
LEGAL REFERENCE

[12] 42 U.S.C. 2000gg
LEGAL REFERENCE

[13] 42 U.S.C. 12101
LEGAL REFERENCE

[14] U.S. Const. Amend. XIV, Equal Protection Clause
LEGAL REFERENCE

[15] 29 U.S.C. 218d
LEGAL REFERENCE

[16] 20 U.S.C. 1232g
LEGAL REFERENCE

[17] 34 CFR 106.44
LEGAL REFERENCE

[18] 34 CFR 106.45
LEGAL REFERENCE

[19] 34 CFR 106.71
LEGAL REFERENCE

[20] 34 CFR Part 99
LEGAL REFERENCE

[21] 29 CFR 1636.3
LEGAL REFERENCE

[22] 16 PA Code 41.204
LEGAL REFERENCE

[23] 16 PA Code 41.205
LEGAL REFERENCE

[24] 16 PA Code 41.207
LEGAL REFERENCE

[25] 34 CFR 106.30
LEGAL REFERENCE

[26] 34 U.S.C. 12291
LEGAL REFERENCE

[27] 20 U.S.C. 1092
LEGAL REFERENCE

[28] 34 CFR 106.8
LEGAL REFERENCE

[29] Pol. 317
POLICY REFERENCE

[30] Pol. 317.1
POLICY REFERENCE

[31] Pol. 806
POLICY REFERENCE

[32] Pol. 824
POLICY REFERENCE