

LITTLE SILVER BOARD OF EDUCATION

Little Silver, New Jersey

FILE CODE: 2224.1

Monitored

Mandated

Other Reasons

Policy

TITLE IX – SEX-BASED DISCRIMINATION

State and federal statutes and regulations prohibit school districts from discriminatory practices in employment or educational opportunity against any person by reason of race, color, national origin, ancestry, age, sex, affectional or sexual orientation, gender identity or expression, marital status, domestic partnership status, familial status, liability for service in the Armed Forces of the United States, nationality, atypical hereditary cellular or blood trait of any individual, genetic information, or refusal to submit to a genetic test or make the results of a genetic test known, pregnancy in employment or in educational opportunities. Further state and federal protection is extended on account of disabilities, social or economic status, pregnancy, childbirth, pregnancy-related disabilities, actual or potential parenthood, or family status.

Title IX Coordinator, Grievance Procedures and Notifications

The Little Silver Board of Education in consultation with the superintendent shall appoint at least one employee to coordinate its efforts to comply with its responsibilities under Title IX. The appointed employee shall be referred to as the "Title IX Coordinator."

The superintendent or his or her designee shall notify applicants for employment, students, applicants to charter schools and other public schools accepting applications for, parents/guardians of elementary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the district, of the name or title, office address, electronic mail address, and telephone number of the employee(s) designated as the Title IX Coordinator pursuant to this paragraph.

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

The contact information required to be listed for the Title IX Coordinator and this board policy shall be prominently display on the district website and in the parent/student handbook, the employee handbooks and catalogs published by the district. The board shall not use or distribute any publication stating that the board treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by Title IX and its related regulations.

The superintendent or his or her designee shall notify applicants for employment, students, parents/guardians of elementary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the district:

- A. Of this policy and the grievance procedures and grievance process; and
- B. That the district does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX and its related regulations not to discriminate in such a manner. Such notification shall state that the requirement not to discriminate in the education program or activity extends to admission and employment, and that inquiries about the application of Title IX may be

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referred to the Title IX Coordinator, to the Assistant Secretary for Civil Rights of the U.S. Department of Education (referred to as the “Assistant Secretary”), or both.

The Title IX coordinator with the superintendent shall develop and the board shall adopt grievance procedures. The grievance procedures shall be published with the policy and shall provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX and its related regulations, and a grievance process for formal complaints.

The superintendent or his or her designee shall notify applicants for employment, students, applicants to charter schools and other public schools accepting applications for attendance, parents/guardians of elementary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the district, of the grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the district will respond. This shall only apply to sex discrimination occurring against a person in the United States.

The Title IX coordinator(s) shall be responsible for coordinating the district’s efforts to comply with its responsibilities under this part, which includes, but may not be limited to, the implementation of the grievance procedures, this policy and accompanying regulations for complying with Title IX. The superintendent or his or her designee shall notify all its applicants for admission and employment, students, parents/guardians of elementary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the district of the name or title, office address electronic mail address, and telephone number of the employee or employees appointed to coordinate the implementation of this policy and accompanying regulations.

General

The board of education is committed to ensuring that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by the district, including but not limited to:

- A. Education programs or activities;
- B. Comparable facilities;
- C. Access to classes and schools;
- D. Classes and extracurricular activities;
- E. Schools;
- F. Access to institutions of vocational education;
- G. Counseling and use of appraisal and counseling materials;
- H. Financial assistance;
- I. Employment assistance to students;
- J. Health and insurance benefits and services;

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- K. Athletics (any interscholastic, club or intramural athletics offered by the district, and the district shall not provide any such athletics separately on the basis of sex).

Nothing in this board policy and regulation and Title IX shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

Education Programs or Activities – Specific Prohibitions

The board of education is committed to ensuring that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by the district.

In providing any aid, benefit, or service to a student, the school community including but not limited to district employees, officers, volunteers, students or contracted service provider, shall not, on the basis of sex:

- A. Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
- B. Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
- C. Deny any person any such aid, benefit, or service;
- D. Subject any person to separate or different rules of behavior, sanctions, or other treatment;
- E. Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
- F. Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;
- G. Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

Comparable Facilities

The district may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

Access to Classes and Schools

Except as may be permitted by Title IX and its related regulations, the district shall not provide or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse to let a student participate on the basis of sex including:

- A. Contact sports in physical education classes

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Students may be separated by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

B. Ability grouping in physical education classes

Students may be separated in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

If use of a single standard of measuring skill or progress in physical education classes has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have that effect.

C. Human sexuality classes

Classes or portions of classes at the elementary level that deal primarily with human sexuality may be conducted in separate sessions for boys and girls.

D. Choruses

The superintendent or his or her designee may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

Classes and Extracurricular Activities

A. A nonvocational district may provide nonvocational single-sex classes or extracurricular activities, if:

1. Each single-sex class or extracurricular activity is based on the district's important objective:
 - a. To improve the educational achievement of its students by providing diverse educational opportunities. The board may approve each single-sex class or extracurricular activity only when the superintendent has demonstrated that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective; or
 - b. To meet the particular, identified educational needs of its students, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective;
2. The objective is implemented in an evenhanded manner;
3. The student enrollment in a single-sex class or extracurricular activity is completely voluntary; and
4. The district provides to all other students, including students of the excluded sex, a substantially equal coeducational class or extracurricular activity in the same subject or activity.

B. Single-sex class or extracurricular activity for the excluded sex

The district, when providing a single-sex class or extracurricular activity, may be required in compliance with law to provide a substantially equal single-sex class or extracurricular activity for students of the excluded sex.

C. Substantially equal factors

Factors the United States Department of Education will consider, either individually or in the aggregate as appropriate, in determining whether classes or extracurricular activities are substantially equal include, but are not limited to, the following: the policies and criteria of admission, the educational benefits provided, including the quality, range, and content of curriculum and other services and the

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quality and availability of books, instructional materials, and technology, the qualifications of faculty and staff, geographic accessibility, the quality, accessibility, and availability of facilities and resources provided to the class, and intangible features, such as reputation of faculty.

D. Periodic evaluations.

The superintendent or his/her/their designee shall conduct periodic evaluations to ensure that single-sex classes or extracurricular activities are based upon genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex and that any single-sex classes or extracurricular activities are substantially related to the achievement of the important objective for the classes or extracurricular activities. Evaluations shall be conducted at least every two years.

E. Scope of coverage

The provisions of section, "Classes and Extracurricular Activities" (A through D) apply to classes and extracurricular activities provided by the district directly or through another entity. The provisions of this section, "Classes and Extracurricular Activities" (A through D), do not apply to interscholastic, club, or intramural athletics.

Schools

A. Definition

For the purposes of this section, the term "school" includes a "school within a school," which means an administratively separate school located within another school.

B. As a general standard, a recipient that operates a public nonvocational elementary school that excludes any students from admission, on the basis of sex, must provide students of the excluded sex a substantially equal single-sex school or coeducational school;

C. A nonvocational public charter school that is a single-school local educational agency may be operated as a single-sex charter school without regard to the general standard requirements of this section;

D. Substantially equal factors

Factors the United States Department of Education will consider, either individually or in the aggregate as appropriate, in determining whether schools are substantially equal include, but are not limited to, the following: The policies and criteria of admission, the educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology, the quality and range of extracurricular offerings, the qualifications of faculty and staff, geographic accessibility, the quality, accessibility, and availability of facilities and resources, and intangible features, such as reputation of faculty.

Access to Institutions of Vocational Education

The district shall not, on the basis of sex, exclude any person from admission to any institution of vocational education operated by the district.

Counseling

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The district shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

The district shall not use different testing or other materials for appraising or counseling students on the basis of their sex or use materials which permit or require different treatment of students on the basis of sex unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. The superintendent or his or her designee shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex.

Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the district shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

When the district finds that a particular class contains a substantially disproportionate number of individuals of one sex, the district shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

Financial Assistance

A. Except as provided in paragraphs (B) and (C) of this section, in providing financial assistance to any of its students, a district shall not:

1. On the basis of sex, provide different amount or types of financial assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate;
2. Through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of the district students in a manner which discriminates on the basis of sex; or
3. Apply any rule or assist in application of any rule concerning eligibility for such assistance, which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.
4. Financial aid established by certain legal instruments.

B. When financial aid is established by certain legal instruments:

1. The district may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; provided, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex;
2. To ensure nondiscriminatory awards of assistance as required in paragraph (B)(1) of this section, the district shall develop and use procedures under which:
 - a. Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;
 - b. An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (B)(2)(a) of this section; and
 - c. No student is denied the award for which he or she was selected under paragraph (B)(2)(a) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

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C. Athletic scholarships

1. To the extent that the district awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic athletics;
2. Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex as permitted by law.

Marital or Parental Status and Pregnancy

The district shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

- A. The district shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient;
- B. The district may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician;
- C. The district may operate a portion of its education program or activity separately for pregnant students. Admittance to this separate program shall be completely voluntary on the part of the student as provided and the district shall ensure that the separate portion is comparable to that offered to non-pregnant students;
- D. The district shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which the district administers, operates, offers, or participates in with respect to students admitted to the district educational programs or activities;
- E. The district shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician. At the conclusion of the leave, the student shall be reinstated to the status which she held when the leave began.

Sexual HarassmentDefinitions

"Education program or activity" includes locations, events, or circumstances over which the district exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

"Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

"Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

TITLE IX – SEX BASED DISCRIMINATION (continued)

“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to the district’s Title IX Coordinator or any district official who has the authority to institute corrective measures on behalf of the district, or to any employee of an elementary school, other than the respondent. “Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in § 106.8(a).

“Exculpatory evidence” means evidence tending to exonerate the accused or helps to establish their innocence.

“Inculpatory” evidence means evidence tending to incriminate the accused or indicate their guilt.

“Formal complaint” means 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. The authority for the Title IX Coordinator to sign a formal complaint does not make the Title IX Coordinator the complainant or other party during the grievance process. 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.

“Retaliation” shall mean actions including, but not limited to, intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX or its related regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX and its related regulations. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation. The following actions shall not constitute retaliation:

- A. An individual exercising free speech under the rights protected by the First Amendment;
- B. Charging an individual under the district’s code of conduct for making a materially false statement in bad faith in the course of a grievance proceeding under this policy. The fact that the charges of discrimination were unfounded or unsubstantiated shall not be the sole reason to conclude that any party made a materially false statement in bad faith.

“Supportive measures” are non-disciplinary, non-punitive 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. Supportive measures shall be designed to restore or preserve equal access to the education 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 shall not be limited to:

- A. Counseling;
- B. Extensions of deadlines or other course-related adjustments;
- C. Modifications of work or class schedules;
- D. Campus escort services;
- E. Mutual restrictions on contact between the parties;

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- F. Changes in work locations or school of attendance;
- G. Leaves of absence;
- H. Increased security;
- I. Monitoring of certain areas of the campus;
- J. Referral to domestic violence or rape crisis programs; and
- K. Referral to community health resources including counseling resources.

Supportive measures may also include assessments or evaluations to determine eligibility for special education or related services, or the need to review an individualized education program (IEP) or Section 504 service agreement based on a student's behavior. This could include, but is not limited to, a manifestation determination or functional behavioral assessment (FBA), in accordance with applicable law, regulations and board policy 6171.4 Special Education.

“Title IX sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

- A. A district employee conditioning the provision of an aid, benefit, or district service on an individual's participation in unwelcome sexual conduct;
- B. 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;
- C. Sexual assault, dating violence, domestic violence or stalking:
 1. 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:
 - a. Length of relationship;
 - b. Type of relationship;
 - c. Frequency of interaction between the persons involved in the relationship.
 2. Domestic violence includes felony or misdemeanor crimes of violence 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;
 3. Sexual assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
 4. Stalking under Title IX means stalking on the basis of sex, for example when the stalker desires to date a victim. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to either:
 - a. Fear for their safety or the safety of others; or
 - b. Suffer substantial emotional distress.

TITLE IX – SEX BASED DISCRIMINATION (continued)

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 subject to Title IX regulations. 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.

Response to Sexual Harassment

A. General

Any person with actual knowledge of sexual harassment in an education program or activity of this district against a person in the United States, shall respond promptly in a manner that is not deliberately indifferent. A district is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

The Title IX Coordinator shall treat complainants and respondents equitably by offering supportive measures to a complainant, and by following the grievance process (see 2224.1 Regulation) before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in this policy against a respondent. The Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

In responding to allegations of harassment, the district's response must not be deliberately indifferent to the allegations. Moreover, the response may not infringe on any Constitutional rights protected under the First, Fifth, or Fourteenth Amendments. Responses that do infringe Constitutional rights may themselves be deemed deliberately indifferent.

B. Response to a formal complaint:

In response to a formal complaint, the district shall follow the grievance process (see 2224.1 Regulation). With or without a formal complaint, the district shall respond promptly in a manner that is not deliberately indifferent and according to all the provisions listed under (A) General above.

C. Emergency removal

1. The district may remove a respondent from the education program or activity on an emergency basis, provided an individualized safety and risk analysis has been conducted, and it is determined that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal;
2. The respondent shall be notified and given an opportunity to challenge the decision immediately following the removal;
3. The rights of persons under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act shall be observed in accordance with the aforementioned Acts.

D. Administrative leave:

TITLE IX – SEX BASED DISCRIMINATION (continued)

The district may place a non-student employee respondent on administrative leave during the pendency of a grievance process. The rights of a non-student employee respondent under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act shall be observed in accordance with the aforementioned Acts.

Grievance Process for Formal Complaints of Sexual Harassment.

For the purpose of addressing formal complaints of sexual harassment, the district's grievance process must comply with the requirements of law as follows. Any provisions, rules, or practices other than those required by the federal regulations under Title IX (see 34 CFR § 106.45) adopted by the board as part of its grievance process for handling formal complaints of sexual harassment shall apply equally to both parties. The board requires that:

- A. The Title IX Coordinator shall treat complainants and respondents equitably:
 1. By providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and
 2. By following the grievance process (see 2224.1 Regulation) before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in this policy against a respondent.
 3. Remedies shall be designed to restore or preserve equal access to the recipient's education program or activity. Such remedies may include the same individualized services described in law (see 34 CFR § 106.30) and district procedures 2224.1 Title IX – Sexual Harassment, Grievance, Regulation grievance as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;
- B. An objective evaluation of all relevant evidence be conducted including both inculpatory and exculpatory evidence, and provides that credibility determinations may not be based on a person's status as a complainant, respondent, or witness;
- C. Any individual designated by the board as a Title IX Coordinator, investigator, decision-maker, or any person designated by the board or the superintendent to facilitate an informal resolution process, shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;
- D. The Title IX coordinators, investigators, decision-makers, and any designated person who facilitates an informal resolution process, shall receive training. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any designated person who facilitates an informal resolution process shall not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment. Training shall be provided on:
 1. The definition of sexual harassment (see 34 CFR § 106.30);
 2. The scope of the district's education program or activity;
 3. How to conduct an investigation: and
 4. The grievance process including hearings, appeals, and informal resolution processes, as applicable; and
 5. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
 6. Technology to be used at a live hearing;
 7. Issues related to the relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant;
 8. Issues of relevance to create an investigative report that fairly summarizes relevant evidence;

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- E. The grievance process shall include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;
- F. The grievance process shall include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;
- G. The grievance process shall include the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the district may implement following any determination of responsibility;
- H. The standard of evidence that shall be used to determine responsibility is the preponderance of evidence standard. The standard of evidence shall apply the same for formal complaints against students as for formal complaints against employees, including faculty, and the same standard of evidence shall apply to all formal complaints of sexual harassment;
- I. Procedures and permissible bases for the complainant and respondent to appeal the determination shall be detailed in the grievance procedures;
- J. The grievance process shall include the range of supportive measures available to complainants and respondents; and
- K. The Title IX coordinator shall ensure that the grievance process will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Notice of Allegations

Upon receipt of a formal complaint, Title IX coordinator shall provide the following written notice to the parties who are known:

- A. Notice of the grievance process, including any informal resolution process;
- B. Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in law (§ 106.30) and this policy, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.
 - 1. Sufficient details include:
 - a. The identities of the parties involved in the incident, if known;
 - b. The conduct allegedly constituting sexual harassment under law (34 CFR § 106.30); and
 - c. The date and location of the alleged incident, if known;

TITLE IX – SEX BASED DISCRIMINATION (continued)

2. The written notice shall include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility shall be made at the conclusion of the grievance process;
 3. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence;
 4. The written notice must inform the parties of any provision in the code of student conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- C. If, in the course of an investigation, the Title IX coordinator or his or her designee decides to investigate allegations about the complainant or respondent that are not included in the notice provided as described above, notice of the additional allegations to the parties whose identities are known shall be provided.

Dismissal of a Formal Complaint

The allegations in a formal complaint shall be investigated. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in law (34 CFR § 106.30) even if proved, did not occur in the district's education program or activity, or did not occur against a person in the United States, then the district shall dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX, including related regulations. This dismissal does not preclude action under another provision of the code of student conduct for behavioral infractions that violate policy.

- A. The formal complaint or any allegations therein may be dismissed, if at any time during the investigation or hearing:
1. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
 2. The respondent is no longer enrolled in the district or employed by the recipient; or
 3. Specific circumstances prevent gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein;
- B. Upon a dismissal required or permitted, the Title IX coordinator shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

Consolidation of Formal Complaints

- A. Formal complaints as to allegations of sexual harassment may be consolidated where the allegations of sexual harassment arise out of the same facts or circumstances. Formal complaints that may be consolidated where the allegations of sexual harassment arise out of the same facts or circumstances are:
1. Against more than one respondent; or
 2. By more than one complainant against one or more respondents; or
 3. By one party against the other party.
- B. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular "party," "complainant," or "respondent" include the plural, as applicable.

Investigation of a Formal Complaint

TITLE IX – SEX BASED DISCRIMINATION (continued)

When investigating a formal complaint and throughout the grievance process, the following requirements shall be implemented:

- A. The Title IX coordinator shall ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility shall rest on the district and not on the parties. Records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, shall not be accessed, considered, disclosed, or otherwise used without that party's voluntary, written consent to do so for a grievance process (if a party is not an "eligible student," as defined in [34 CFR § 99.3](#), then the recipient must obtain the voluntary, written consent of a "parent," as defined in [34 CFR § 99.3](#));
- B. An equal opportunity for the parties to present witnesses shall be provided, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- C. The ability of either party to discuss the allegations under investigation or to gather and present relevant evidence shall not be restricted;
- D. The parties shall be provided with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding. The district may, however, establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
- E. A party whose participation is invited or expected shall be provided written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings. This notice shall be provided with sufficient time for the party to prepare to participate;
- F. Both parties shall be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the Title IX coordinator must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
- G. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (when provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

Hearings.

Elementary school districts may, but need not, provide for a hearing as part of the grievance process, though a hearing may be required under another federal or state law, other than Title IX, that may apply based on the nature of the specific allegations.

TITLE IX – SEX BASED DISCRIMINATION (continued)

- A. With or without a hearing, after the investigative report has been sent to the parties and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party:
1. The opportunity to submit written, relevant questions that a party wants asked of any party or witness;
 2. Provide each party with the answers; and
 3. Allow for additional, limited follow-up questions from each party.
- B. With or without a hearing, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

In the case of allegations of sexual harassment against employees, that are subject to criminal investigations district hearing proceedings may need to be delayed in order to protect the accused's 5th Amendment rights.

Determination Regarding Responsibility

- A. The decision-maker(s), who cannot be the same person(s) as the Title IX coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the recipient must apply the standard of evidence the preponderance of the evidence standard. The standard of evidence shall apply the same for formal complaints against students as for formal complaints against employees, including faculty, and the same standard of evidence shall apply to all formal complaints of sexual harassment:
- B. The written determination shall include:
1. Identification of the allegations potentially constituting sexual harassment as defined in law (§ 106.30) and this policy;
 2. A description of the procedural steps taken from the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 3. Findings of fact supporting the determination;
 4. Conclusions regarding the application of the district code of student conduct to the facts;
 5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and whether remedies designed to restore or preserve equal access to the education program or activity will be provided by the district to the complainant; and
 6. The procedures and permissible bases for the complainant and respondent to appeal the determination.
- C. The written determination shall be provided to the parties simultaneously. The determination regarding responsibility becomes final either:
1. On the date that the with the written determination of the result of the appeal is provided, if an appeal is filed; or
 2. If an appeal is not filed, the date on which an appeal would no longer be considered timely.

TITLE IX – SEX BASED DISCRIMINATION (continued)

D. The Title IX Coordinator shall be responsible for effective implementation of any remedies.

Appeals

The district shall offer both parties an appeal from a determination regarding responsibility, and from a dismissal of a formal complaint or any allegations therein, on the following bases:

- A. Procedural irregularity that affected the outcome of the matter;
- B. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- C. The Title IX coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter:

The district may offer an appeal equally to both parties on additional bases. As to all appeals, the recipient must:

- A. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- B. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX coordinator;
- C. Ensure that the decision-maker(s) for the appeal complies with the standards in the section of this policy entitled, “Grievance Process for Formal Complaints of Sexual Harassment”_(see C-D just above), regarding conflict of interest and training;
- D. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- E. Issue a written decision describing the result of the appeal and the rationale for the result; and
- F. Provide the written decision simultaneously to both parties.

Informal Resolution

The district may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with law and this policy. Similarly, the district may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility, an informal resolution process may be facilitated by the district, such as mediation, that does not involve a full investigation and adjudication provided that the district:

- A. Provides to the parties a written notice disclosing:
 - 1. The allegations;
 - 2. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided,

TITLE IX – SEX BASED DISCRIMINATION (continued)

however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and

3. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

B. Obtains the parties' voluntary, written consent to the informal resolution process; and

C. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Recordkeeping.

The district shall maintain for a period of seven years records of:

- A. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
- B. Any appeal and the result therefrom;
- C. Any informal resolution and the result therefrom; and
- D. All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The district shall make these training materials publicly available on its website (or if the district does not maintain a website these materials shall be available upon request for inspection by members of the public);

The district shall create for each response required under the section of this policy entitled, "Response to Sexual Harassment" (see A-D, page 9 of this policy), and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the superintendent or his or her designee shall document the basis for the conclusion that the response was not deliberately indifferent, and that the district has taken measures designed to restore or preserve equal access to the district education program or activity. If the complainant is not provided with supportive measures, then the district shall document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the district in the future from providing additional explanations or detailing additional measures taken.

Retaliation

Retaliation is prohibited. No district employee, officer, or student, or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX and its related regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or its related regulations, constitutes retaliation. The district shall 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

TITLE IX – SEX BASED DISCRIMINATION (continued)

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 statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of this policy and 34 CFR part 106 (the Title IX regulations), including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination as described above.

Dissemination of Policy

The superintendent or his or her designee must notify applicants for admission and employment, students, parents/guardians of elementary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the district that the district does not discriminate on the basis of sex in the educational program or activity which it operates, and that it is required by Title IX and its related regulations not to discriminate in such a manner.

A. The notification shall state at least:

1. That the requirement not to discriminate in the education program or activity extends to employment in the district, and to admission in the district (where applicable); and
2. That inquiries concerning the application of Title IX and its related regulations may be referred to the employee designated as the Title IX Coordinator or to the Assistant Secretary.

B. Publications:

1. The district shall prominently display the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the district's Title IX coordinator, as well as the Title IX policy as described in this section ("Dissemination of Policy") on the district's website, if any, and in each handbook or catalog that it makes available to applicants for admission and employment, students, parents/guardians of elementary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the district;
2. The district shall not use or distribute a publication stating that the district treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by Title IX;
3. As described in the above section, "Title IX Coordinator, Grievance Procedures and Notifications," the district must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by the Title IX regulations and a grievance process for formal complaints as previously described in this policy. The district must provide applicants for admission and employment, students, parents/guardians of elementary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the district with notice of the district's grievance procedures and grievance process, including how to report or file a formal complaint of sexual harassment, and how the district will respond. The requirements of this paragraph only apply to sex discrimination occurring against a person in the United States.

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Key Words

TITLE IX – SEX BASED DISCRIMINATION (continued)

Sexual Harassment, Title IX, Title IX Coordinator, Grievance Procedures, Grievance Process, Access, Nondiscrimination, Harassment, Equal Educational Opportunity, Equal Employment Opportunity,

Legal References:	<u>N.J.S.A. 2C:16-1</u>	Bias intimidation
	<u>N.J.S.A. 2C:33-4</u>	Harassment
	<u>N.J.S.A. 10:5-1 et seq.</u>	Law Against Discrimination
	<u>N.J.S.A. 18A:6-6</u>	No sex discrimination
	<u>N.J.S.A. 18A:29-2</u>	Equality of compensation for male and female teachers
	<u>N.J.S.A. 18A: 34:6B-20</u>	Unlawful employment practice related to salary history; exceptions
	<u>N.J.S.A. 18A:35-1 et seq.</u>	Curriculum and courses
	<u>N.J.S.A. 18A:36-41</u>	Development, distribution of guidelines concerning transgender students
	<u>N.J.S.A. 18A:37-14 through -19</u>	Harassment, intimidation, and bullying defined; definitions
	<u>N.J.S.A. 18A:36-20</u>	Discrimination; prohibition
	<u>N.J.S.A. 18A:38-5.1</u>	Attendance at school
	<u>N.J.A.C. 6A:7-1.1 et seq.</u>	Managing for Equality and Equity in Education
	<u>See particularly:</u>	
	<u>N.J.A.C. 6A:7-1.4, -1.5, -1.6, -1.7, -1.8</u>	
	<u>N.J.A.C. 6A:30-1.1 et seq.</u>	Evaluation of the Performance of School Districts

United States Constitution, Article XIV, Section 1.

New Jersey State Constitution, Article I, Paragraph 1

Executive Order 11246 as amended

29 U.S.C.A. § 201 et seq., see particularly § 206 - Fair Labor Standards Act of 1963 as amended

20 U.S.C.A. § 1681 et seq. - Title IX of the Education Amendments of 1972

42 U.S.C.A. § 2000e et seq. - Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunities Act of 1972

34 CFR 106.1 et seq. – Title IX regulations

Cannon v. Univ. of Chicago, 441 U.S. 677 (1979)

Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986)

School Board of Nassau County v. Arline, 480 U.S. 273 (1987)

Franklin v. Ginnett County Public Schools, 503 U.S. 60 (1992)

State v. Mortimer, 135 N.J. 517 (1994)

Gebser v. Lago Vista Indep. School District, 524 U.S. 274 (1998)

Davis v. Monroe County Board of Education, 526 U.S. 629 (1999)

TITLE IX – SEX BASED DISCRIMINATION (continued)

Jackson v. Birmingham Bd. of Educ., 544 U.S. 167 (2005)

Saxe v. State College Area School District, 240 F. 3d 200 (3d Cir. 2001)

Bostic v. Smyrna School District, 418 F. 3d 355 (3d Cir. 2005)

Doe v. Boyertown Area Sch. Dist., 897 F.3d 518 (3d Cir. 2018)

M.S. v. Susquehanna Twp. School District, 969 F. 3d 120 (3d Cir. 2020)

Peper v. Princeton University Bd. of Trustees, 77 N.J. 55 (1978)

L.W. v. Toms River Regional Schools Board of Education, N.J., No. A-111-05 (Feb. 22, 2007), 2007 N.J. LEXIS 184. The New Jersey Supreme Court ruled that a school district may be held liable under the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49, when students harass another student because of his perceived sexual orientation. A district school will be liable for such harassment if it knew or should have known of the harassment but failed to take reasonable remedial actions. The matter was remanded to the Director of the Division on Civil Rights.

Comprehensive Equity Plan, New Jersey Department of Education

Possible

<u>Cross References:</u>	*2224	Nondiscrimination/Affirmative Action
	*3320	Purchasing procedures
	*4111	Recruitment, selection and hiring
	*4111.1	Nondiscrimination/affirmative action
	*4131/4131.1	Staff development; inservice education/visitations/conferences
	*4211	Recruitment, selection and hiring
	*4211.1	Nondiscrimination/affirmative action
	*4231/4231.1	Staff development; inservice education/visitations/conferences
	*5131	Conduct/discipline
	*5145.4	Equal educational opportunity
	*6121	Nondiscrimination/affirmative action
	*6145	Extracurricular activities

*Indicates policy is included in the Critical Policy Reference Manual.