CHRISTIAN COUNTY PUBLIC SCHOOLS

POST OFFICE BOX 609 200 GLASS AVENUE HOPKINSVILLE, KY. 42241 PHONE [270) 887-7000

MEMORANDUM

TO: Christian County Board of Education Board Members

FROM: Melanie A. Barrett, Director of Pupil Personnel

DATE: August 6, 2020

RE: Title IX Sexual Harassment KSBA 2020 Policy Updates

Please review Title IX Regulations going into effect on August 14. The approval of the Interim Policy Update will become effective immediately pending passage pursuit to the Emergency Provisions of Board Policy 1.5 which allows for one emergency reading of policy if reflected in the minutes.

The Christian County Board of Education is requested to review and approve of the Title IX Sexual Harassment Interim Policy Updates.

LEGAL: NEW TITLE IX SEXUAL HARASSMENT REGULATIONS (34 C.F.R. § 106.8) GO INTO EFFECT AUGUST 14, 2020 AND REQUIRE NOTICE OF NON-DISCRIMINATION BASED ON SEX.
FINANCIAL IMPLICATIONS: COST OF PROVIDING NOTICE AND TRAINING TO ALL PERSONNEL

PERSONNEL 03.113

- CERTIFIED PERSONNEL -

Equal Employment Opportunity

NONDISCRIMINATION

As required by Title IX, the District does not discriminate on the basis of sex regarding admission to the District or in the educational programs or activities operated by the District. Inquiries regarding Title IX Sexual Harassment may be referred to the District Title IX Coordinator (TIXC), the Assistant Secretary for Civil Rights, or both.[1]

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The Superintendent shall adhere to a policy of equal employment opportunity in all personnel matters. No person shall be subjected to discrimination in regard to employment, retention, promotion, transfer or dismissal because of race, color, religion, sex, national origin, political affiliation, age, or limitations related to pregnancy, childbirth, or related medical conditions.[21]

No employee shall be appointed or promoted to, or demoted or dismissed from, any position or in any way favored or discriminated against with respect to employment because of his/her political or religious opinions or affiliations, ethnic origin, race, color, sex, genetic information, age, disabling condition, or limitations related to pregnancy, childbirth, or related medical conditions.[21]

INDIVIDUALS WITH DISABILITIES

No qualified person with a disability shall, on the basis of the disability, be subject to discrimination in employment. [32] No human immunodeficiency virus (HIV) related test shall be required as a condition of hiring, promotion, or continued employment, unless the absence of HIV infection is a bona fide occupational qualification for the job in question as defined in KRS 207.135.

REASONABLE ACCOMMODATION

Employees who have a long-term or permanent disability may request the District supervisor to provide reasonable accommodations necessary for them to perform the essential duties of the position. Medical information obtained as part of an employee request shall be confidential.[43]

If assistive technology is deemed necessary for an employee, every effort will be made to obtain that technology in a timely fashion.

The District shall engage in a timely, good faith and interactive process to determine reasonable accommodations for an employee's limitations related to pregnancy, childbirth, or related medical conditions. Reasonable accommodation shall be provided as required by law.

ADVISING EMPLOYEES

The Superintendent shall inform all school employees of the provisions of this policy.[1]

Equal Employment Opportunity

REFERENCES:

[1]34 C.F.R. § 106.8
[2][1]KRS 161.164; KRS Chapter 344; 42 U.S.C. 2000e, Civil Rights Act of 1964, Title VII
[3][2]29 U.S.C.A. 794
[4][3]29 U.S.C. section 1630.14
KRS 207.135
34 C.F.R. 104.3 - 104.14
Americans with Disabilities Act
Kentucky Education Technology System (KETS)
Section 504 of the Rehabilitation Act of 1973
Title IX of the Education Amendments of 1972
Genetic Information Nondiscrimination Act of 2008

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RELATED POLICIES:

03.133; 03.1621; 03.212; 03.2621; 05.11

LEGAL: NEW POLICY MANDATED BY AMENDMENTS TO TITLE IX REGULATION DEFINES "TITLE IX SEXUAL HARASSMENT" TO INCLUDE SERIOUS MISCONDUCT'; INCLUDES OTHER KEY DEFINITIONS; REQUIRES DISCUSSION/IMPLEMENTATION OF SUPPORTIVE MEASURES WHETHER OR NOT A "FORMAL COMPLAINT" IS FILED; REQUIRES GRIEVANCE PROCEDURES; CONFIRMS GENERAL PARENT RIGHTS TO ACT ON BEHALF OF STUDENTS; ADDRESSES CONFLICT OF INTEREST STANDARDS FOR MULTIPLE REQUIRED DISTRICT ACTORS AT INVESTIGATIVE, DECISION-MAKING, AND APPELLATE STAGES; AND ALSO COVERS: CONFIDENTIALITY, EVIDENCE RULES, REQUIRED EMPLOYEE REPORTING, AND RETALIATION.
FINANCIAL IMPLICATIONS: COST OF PROVIDING NOTICE AND TRAINING TO ALL PERSONNEL

- CERTIFIED PERSONNEL -

Title IX Sexual Harassment

INTRODUCTION AND SCOPE

A United States Department of Education regulation published on May 19, 2020 defines sexual harassment for purposes of Title IX (sometimes referred to in policy and procedure as "Title IX Sexual Harassment"). In addition to numerous other matters, the regulation sets forth grievance procedure requirements that apply (including the initiation of a "formal complaint") before there is a determination that an employee is responsible for Title IX Sexual Harassment. The applicable definition of sexual harassment describes serious sexual misconduct. If the alleged actions that are the subject of a formal complaint do not descend to the level of conduct described in the definition of Title IX Sexual Harassment; do not take place in a "program or activity" of the school District within the meaning of Title IX; or do not take place in the United States, the formal complaint must be dismissed.

Such a dismissal does not mean that the alleged offending party cannot be the subject of investigation or discipline on grounds other than "Title IX Sexual Harassment" as addressed in Board policy or law, including conduct allegedly constituting sexual harassment or other sexual misconduct that does fall within the definition of "Title IX Sexual Harassment."[1]

PROHIBITION

Title IX Sexual Harassment in educational programs or activities of the District is prohibited.

GRIEVANCE PROCEDURE

The District shall provide a Title IX Sexual Harassment grievance procedure that treats complainants and respondents equitably as required by Federal Regulation.[2]

DEFINITIONS

TITLE IX SEXUAL HARASSMENT

"Title IX Sexual Harassment" means conduct on the basis of sex that satisfies one or more of the following:

1) An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct (i.e., 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 the District's education program or activity;

Title IX Sexual Harassment

DEFINITIONS (CONTINUED)

TITLE IX SEXUAL HARASSMENT (CONTINUED)

3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30). For purposes of this definition, "sexual assault" means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting system. A sex offense is an act directed against another person, without the consent of the second person, including instances where the second person is incapable of giving consent.[3]

   The term "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 shall be based on the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

   The term "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 grant monies, 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.

   The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

Consent

"Consent" means a voluntary expression of willingness, permission, or agreement to engage in sexual activity throughout a sexual encounter. Consent cannot be granted by an individual: who is less than the statutory age of consent under Kentucky criminal law, has a mental or physical condition or incapacity that prevents the giving of consent; or from whom ostensible "consent" is extracted through threat, coercion, or forcible compulsion.

Complainant

"Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. This applies to such individual even if no formal complaint is filed. Only a complainant who is participating or attempting to participate in the District's educational programs or activities may file a formal complaint.

Respondent

"Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. This applies to such individual even if no formal complaint is filed. Only a person in his or her individual capacity is subject to a Title IX investigation.

Title IX Sexual Harassment

DEFINITIONS (CONTINUED)

Title IX Coordinator (TIXC)

The TIXC is the individual or individuals designated and authorized to coordinate District Title IX programs. The TIXC is expected to engage in activities intended to provide a fair and neutral process for all parties, including implementation of supportive measures and remedies where appropriate. The District may use co-coordinators and/or deputy coordinators.

Formal Complaint

"Formal complaint" means a document filed by a complainant or signed by the TIXC alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment. A formal complaint may be filed with the TIXC in person, by mail, or by electronic mail, by using the contact information provided by the District. The complaint document may be physical or electronic, shall contain the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint. Where the TIXC signs a formal complaint, the TIXC is not "the complainant" or otherwise considered a party, but is to comply with applicable procedures.

Supportive Measures

"Supportive measures" mean nondisciplinary, 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 may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services mutual restrictions on contact between the parties, unilateral restrictions on contact that are not unreasonably burdensome on a respondent, changes in work or housing locations, authorized leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Supportive measures shall be confidential, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures. The TIXC is responsible for coordinating the effective implementation of supportive measures.

Education Program or Activity

''Education program or activity'' means District operations and includes locations, events, or circumstances over which the District exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

Preponderance of the Evidence

"Preponderance of evidence" means evidence that is of greater weight or more convincing that an asserted fact or facts occurred than evidence in opposition to such facts. It is evidence which as a whole shows that an assertion to be proven is more likely than not.

Title IX Sexual Harassment

REGULATION AND POLICY DOES NOT AFFECT PARENT RIGHTS

Absent a court order or other legal requirement to the contrary, a parent or guardian is authorized to act on behalf of a minor student regarding decision-making and the exercise of rights under the Title IX Sexual Harassment policy and procedure, including the opportunity to accompany a minor student to meetings and interviews.

SEGREGATION OF FUNCTIONS / CONFLICT OF INTEREST

The TIXC, investigator, decisionmaker(s), and any informal resolution facilitator shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. These individuals are to serve impartially without prejudgment of the facts at issue. The investigative, initial decision-making, appellate decision-making, and resolution functions must be performed by different trained individuals, who may be District employees or contractors.

CONFIDENTIALITY

With respect to its administration of Title IX Sexual Harassment policies and corresponding procedures, the District must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted under FERPA[5], required by law, or to carry out Title IX purposes, including the conduct of any investigation, hearing or Title IX judicial proceedings.

Investigative evidence directly related to the allegations of a formal complaint gathered by the District is subject to inspection and review by the parties but is not to be disseminated to the public. The United States Department of Education rule commentary provides that under the applicable FERPA definition of "education records" a parent of a complainant or respondent or (eligible student) has a right to inspect and review any witness statement that is directly related to the student, even if that statement contains information that is also directly related to another student, if the information cannot be segregated or redacted without destroying its meaning.[4]

EMPLOYEES SHALL REPORT

Employees who believe or have been made aware that they or any other employee, student, or visitor has been subject to Title IX Sexual Harassment shall report it to the TIXC. Failure to make such a report shall be grounds for discipline up to and including termination. If the knowledge of the reporting party gives rise to reasonable cause to believe that the reported conduct constitutes child abuse Policy 09.227 or a reportable criminal offense Policy 09.221, notification of state officials shall be made as required by law.6

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FALSE REPORTS PROHIBITED

Employees or students who intentionally make false reports related to the District's administration of this policy and the corresponding procedures, are subject to disciplinary sanctions under applicable District policy, law, or the Code of Acceptable Behavior and Discipline.

Title IX Sexual Harassment

RELATED EVIDENCE RULES SUMMARY

The following rules apply to the District investigation and grievance process under the Title IX Sexual Harassment regulation:

a) The District shall not require, allow, rely upon, or otherwise use questions or evidence that constitutes or seeks disclosure of information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege.
b) The District cannot access, consider, disclose, or otherwise use a party's records made or maintained in connection with provision of treatment to the party by medical or mental health professionals or paraprofessionals unless the District obtains written consent from the party.
c) Questions and evidence about the complainant's sexual predisposition or prior behavior are not relevant unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct or, such questions or evidence are offered to prove consent.

RETALIATION PROHIBITED

No District 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, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any Title IX investigation, proceeding, or hearing.

REFERENCES:

[2]34 C.F.R. § 106.45
[3]KRS 510.020
[4]85 Fed. Reg. 30433 (May 19, 2020)
Americans with Disabilities Act (42 U.S.C. §12101 et seq., as amended; 28 C.F.R. § 35.107)
Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794 et seq., as amended; 34 C.F.R. § 104.7)
Title IX of the Education Amendments of 1972 (20 USC § 1681, et seq.); 34 C.F.R. Part 106
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Violence Against Women Act (34 U.S.C. § 1092(f)(6)(A)(v)
34 U.S.C. § 12291(a)(10)
34 U.S.C. §12291(a)(3)
34 U.S.C. §12291(a)(8)

RELATED POLICIES:

[1]03.162; 03.262; 09.42811
[5]09.14
[6]09.227; 09.2211
03.2621; 09.428111

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PERSONNEL 03.212

- CLASSIFIED PERSONNEL -

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INDIVIDUALS WITH DISABILITIES

No qualified person with a disability, as defined by law, shall, on the basis of the disability, be subject to discrimination in employment.[3]

District employment practices shall be in accordance with the Board-approved procedures addressing requirements of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

No human immunodeficiency virus (HIV) related test shall be required as a condition of hiring, promotion, or continued employment, unless the absence of HIV infection is a bona fide occupation qualification for the job in question as defined in KRS 207.135.

REASONABLE ACCOMMODATION

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Equal Employment Opportunity

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RELATED POLICIES:

03.113; 03.1621; 03.233; 03.2621; 05.11

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FINANCIAL IMPLICATIONS: COST OF PROVIDING NOTICE AND TRAINING TO ALL PERSONNEL

- CLASSIFIED PERSONNEL -

Title IX Sexual Harassment

INTRODUCTION AND SCOPE

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GRIEVANCE PROCEDURE

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DEFINITIONS

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Title IX Sexual Harassment

DEFINITIONS (CONTINUED)

TITLE IX SEXUAL HARASSMENT (CONTINUED)

6) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30). For purposes of this definition, "sexual assault" means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting system. A sex offense is an act directed against another person, without the consent of the second person, including instances where the second person is incapable of giving consent.[3]

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Title IX Sexual Harassment

DEFINITIONS (CONTINUED)

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Title IX Sexual Harassment

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Title IX Sexual Harassment

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RELATED EVIDENCE RULES SUMMARY

The following rules apply to the District investigation and grievance process under the Title IX Sexual Harassment regulation:

d) The District shall not require, allow, rely upon, or otherwise use questions or evidence that constitutes or seeks disclosure of information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege.
e) The District cannot access, consider, disclose, or otherwise use a party's records made or maintained in connection with provision of treatment to the party by medical or mental health professionals or paraprofessionals unless the District obtains written consent from the party.
f) Questions and evidence about the complainant's sexual predisposition or prior behavior are not relevant unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct or, such questions or evidence are offered to prove consent.

RETALIATION PROHIBITED

No District 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, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any Title IX investigation, proceeding, or hearing.

REFERENCES:

[2]34 C.F.R. § 106.45
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Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794 et seq., as amended; 34 C.F.R. § 104.7)
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34 U.S.C. § 12291(a)(10)
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34 U.S.C. §12291(a)(8)

Title IX Sexual Harassment

RELATED POLICIES:

[1]03.162; 03.262; 09.42811
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[6]09.227; 09.2211
03.1621; 09.428111

LEGAL: NEW TITLE IX SEXUAL HARASSMENT REGULATIONS (34 C.F.R. § 106.8) GO INTO EFFECT AUGUST 14, 2020 AND REQUIRE NOTICE OF NON-DISCRIMINATION BASED ON SEX.
FINANCIAL IMPLICATIONS: COST OF PROVIDING NOTICE AND TRAINING TO ALL PERSONNEL

STUDENTS 09.13

Equal Educational Opportunities

DISCRIMINATION PROHIBITED

As required by Title IX, the District does not discriminate on the basis of sex regarding admission to the District or in the educational programs or activities operated by the District. Inquiries regarding Title IX Sexual Harassment may be referred to the District Title IX Coordinator (TIXC), the Assistant Secretary for Civil Rights, or both.[1]

No pupil shall be discriminated against because of age, color, disability[2], race, national origin, religion, sex, or veteran status.

STUDENTS WITH DISABILITIES

The District shall provide a free, appropriate public education to each qualified student with a disability, as defined by law, within its jurisdiction.

The District shall operate its programs in accordance with the procedures addressing requirements of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

Parents of students who have a temporary or permanent disability may request the District supervisor to provide appropriate accommodations necessary for them to participate in instructional and extracurricular activities, as required by law. Students who are at least eighteen (18) years of age may submit their own requests.

STUDENT RELIGIOUS ACTIVITIES OR POLITICAL EXPRESSION

The District shall observe the rights of students to voluntarily engage in religious activities. Students may express religious or political viewpoints while at school to the same extent and under the same circumstances as other permitted activities or expression. Consistent with the Constitutions of the United States and the Commonwealth of Kentucky and law, students shall be permitted to engage in these activities and express these viewpoints, provided they do not:

1. Infringe on the rights of the school to:
   a. Maintain order and discipline;
   b. Prevent disruption of the educational process; and
   c. Determine education curriculum;
2. Harass other persons or coerce other persons to participate in the activity; or
3. Otherwise infringe on the rights of other persons.

Student complaints concerning possible violations of their religious rights shall be addressed in keeping with legal requirements. Their complaints shall be directed to the Principal, who shall investigate and take appropriate action within thirty (30) days of receipt of the written notification.

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Equal Educational Opportunities

REFERENCES:

[1]34 C.F.R. § 106.8
[2]Bd. of Educ., etc. v. Rowley 102 S .Ct. 3034 (1982)
District special education policy and procedures manual; District 504 procedures
KRS 157.200; KRS 157.224; KRS 157.230; KRS 157.350
KRS 158.183; KRS 160.295; Age Discrimination Act of 1975
Section 504 of Rehabilitation Act of 1973, Americans with Disabilities Act
Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972
Vietnam Era Veterans Readjustment Assistance Act of 1974
Kentucky Education Technology System (KETS); 28 C.F.R. Section 35.101 et seq.

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RELATED POLICIES:

03.113; 03.1621; 03.212; 03.2621; 05.11; 08.131; 09.3211; 09.428111

LEGAL: NEW POLICY MANDATED BY AMENDMENTS TO TITLE IX REGULATION DEFINES "TITLE IX SEXUAL HARASSMENT" TO INCLUDE SERIOUS MISCONDUCT"; INCLUDES OTHER KEY DEFINITIONS; REQUIRES DISCUSSION/IMPLEMENTATION OF SUPPORTIVE MEASURES WHETHER OR NOT A "FORMAL COMPLAINT" IS FILED; REQUIRES GRIEVANCE PROCEDURES; CONFIRMS GENERAL PARENT RIGHTS TO ACT ON BEHALF OF STUDENTS; ADDRESSES CONFLICT OF INTEREST STANDARDS FOR MULTIPLE REQUIRED DISTRICT ACTORS AT INVESTIGATIVE, DECISION-MAKING, AND APPELLATE STAGES; AND ALSO COVERS: CONFIDENTIALITY, EVIDENCE RULES, REQUIRED EMPLOYEE REPORTING, AND RETALIATION.
FINANCIAL IMPLICATIONS: COST OF PROVIDING NOTICE AND TRAINING TO ALL PERSONNEL

STUDENTS 09.428111

Title IX Sexual Harassment

INTRODUCTION AND SCOPE

A United States Department of Education regulation published on May 19, 2020 defines sexual harassment for purposes of Title IX (sometimes referred to in policy and procedure as "Title IX Sexual Harassment"). In addition to numerous other matters, the regulation sets forth grievance procedure requirements that apply (including the initiation of a "formal complaint") before there is a determination that a student is responsible for Title IX Sexual Harassment. The applicable definition of sexual harassment describes serious sexual misconduct. If the alleged actions that are the subject of a formal complaint do not descend to the level of conduct described in the definition of Title IX Sexual Harassment; do not take place in a "program or activity" of the school District within the meaning of Title IX; or do not take place in the United States, the formal complaint must be dismissed.

Such a dismissal does not mean that the alleged offending party cannot be the subject of investigation or discipline on grounds other than "Title IX Sexual Harassment" as addressed in Board policy or law, including conduct allegedly constituting sexual harassment or other sexual misconduct that does fall within the definition of "Title IX Sexual Harassment."[1]

PROHIBITION

Title IX Sexual Harassment in educational programs or activities of the District is prohibited.

GRIEVANCE PROCEDURE

The District shall provide a Title IX Sexual Harassment grievance procedure that treats complainants and respondents equitably as required by Federal Regulation.[2]

DEFINITIONS

Title IX Sexual Harassment

"Title IX Sexual Harassment" means conduct on the basis of sex that satisfies one or more of the following:

1) An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct (i.e., 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 the District's education program or activity;

Title IX Sexual Harassment

DEFINITIONS (CONTINUED)

Title IX Sexual Harassment (continued)

3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30). For purposes of this definition, "sexual assault" means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting system. A sex offense is an act directed against another person, without the consent of the second person, including instances where the second person is incapable of giving consent.[3]

   The term "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 shall be based on the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

   The term "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 grant monies, 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.

   The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

Consent

"Consent" means a voluntary expression of willingness, permission, or agreement to engage in sexual activity throughout a sexual encounter. Consent cannot be granted by an individual: who is less than the statutory age of consent under Kentucky criminal law, has a mental or physical condition or incapacity that prevents the giving of consent; or from whom ostensible "consent" is extracted through threat, coercion, or forcible compulsion.

Complainant

"Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. This applies to such individual even if no formal complaint is filed. Only a complainant who is participating or attempting to participate in the District's educational programs or activities may file a formal complaint.

Respondent

"Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. This applies to such individual even if no formal complaint is filed. Only a person in his or her individual capacity is subject to a Title IX investigation.

Title IX Sexual Harassment

Title IX Coordinator (TIXC)

The TIXC is the individual or individuals designated and authorized to coordinate District Title IX programs. The TIXC is expected to engage in activities intended to provide a fair and neutral process for all parties, including implementation of supportive measures and remedies where appropriate. The District may use co-coordinators and/or deputy coordinators.

Formal Complaint

"Formal complaint" means a document filed by a complainant or signed by the TIXC alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment. A formal complaint may be filed with the TIXC in person, by mail, or by electronic mail, by using the contact information provided by the District. The complaint document may be physical or electronic, shall contain the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint. Where the TIXC signs a formal complaint, the TIXC is not "the complainant" or otherwise considered a party, but is to comply with applicable procedures.

Supportive Measures

"Supportive measures" mean nondisciplinary, 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 may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, unilateral restrictions on contact that are not unreasonably burdensome on a respondent, changes in work or housing locations, increased security and monitoring of certain areas of the campus, and other similar measures. Supportive measures shall be confidential, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures. The TIXC is responsible for coordinating the effective implementation of supportive measures.

Education Program or Activity

''Education program or activity'' means District operations and includes locations, events, or circumstances over which the District exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

Preponderance of the Evidence

"Preponderance of evidence" means evidence that is of greater weight or more convincing that an asserted fact or facts occurred than evidence in opposition to such facts. It is evidence which as a whole shows that an assertion to be proven is more likely than not.

Title IX Sexual Harassment

REGULATION AND POLICY DOES NOT AFFECT PARENT RIGHTS

Absent a court order or other legal requirement to the contrary, a parent or guardian is authorized to act on behalf of a minor student regarding decision-making and the exercise of rights under the Title IX Sexual Harassment policy and procedure, including the opportunity to accompany a minor student to meetings and interviews.

SEGREGATION OF FUNCTIONS / CONFLICT OF INTEREST

The TIXC, investigator, decisionmaker(s), and any informal resolution facilitator shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. These individuals are to serve impartially without prejudgment of the facts at issue. The investigative, initial decision-making, appellate decision-making, and resolution functions must be performed by different trained individuals, who may be District employees or contractors.

CONFIDENTIALITY

With respect to its administration of Title IX Sexual Harassment policies and corresponding procedures, the District must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted under FERPA[4], required by law, or to carry out Title IX purposes, including the conduct of any investigation, hearing or Title IX judicial proceedings.

Investigative evidence directly related to the allegations of a formal complaint gathered by the District is subject to inspection and review by the parties but is not to be disseminated to the public. The United States Department of Education rule commentary provides that under the applicable FERPA definition of "education records" a parent of a complainant or respondent or (eligible student) has a right to inspect and review any witness statement that is directly related to the student, even if that statement contains information that is also directly related to another student, if the information cannot be segregated or redacted without destroying its meaning.[4]

EMPLOYEES SHALL REPORT

Employees who believe or have been made aware that they or any other employee, student, or visitor has been subject to Title IX Sexual Harassment shall report it to the TIXC. Failure to make such a report shall be grounds for discipline up to and including termination. If the knowledge of the reporting party gives rise to reasonable cause to believe that the reported conduct constitutes child abuse Policy 09.227 or a reportable criminal offense Policy 09.221, notification of state officials shall be made as required by law.6

FALSE REPORTS PROHIBITED

Employees or students who intentionally make false reports related to the District's administration of this policy and the corresponding procedures, are subject to disciplinary sanctions under applicable District policy, law, or the Code of Acceptable Behavior and Discipline, as applicable.

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Title IX Sexual Harassment

RELATED EVIDENCE RULES SUMMARY

The following rules apply to the District investigation and grievance process under the Title IX Sexual Harassment regulation:

g) The District shall not require, allow, rely upon, or otherwise use questions or evidence that constitutes or seeks disclosure of information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege.

h) The District cannot access, consider, disclose, or otherwise use a party's records made or maintained in connection with provision of treatment to the party by medical or mental health professionals or paraprofessionals unless the District obtains written consent from the party.

i) Questions and evidence about the complainant's sexual predisposition or prior behavior are not relevant unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct or, such questions or evidence are offered to prove consent.

RETALIATION PROHIBITED

No District 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, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any Title IX investigation, proceeding, or hearing.

REFERENCES:

[2]34 C.F.R. § 106.45
[3]KRS 510.020
[4]85 Fed. Reg. 30433 (May 19, 2020)
Americans with Disabilities Act (42 U.S.C. §12101 et seq., as amended; 28 C.F.R. § 35.107)
Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794 et seq., as amended; 34 C.F.R. § 104.7)
Title IX of the Education Amendments of 1972 (20 USC § 1681, et seq.); 34 C.F.R. Part 106
Clery Act (20 U.S.C. §1092(f)(6)(A)(v)
Violence Against Women Act (34 U.S.C. § 1092(f)(6)(A)(v)
34 U.S.C. § 12291(a)(10)
34 U.S.C. §12291(a)(3)
34 U.S.C. §12291(a)(8)

RELATED POLICIES:

[1]03.162; 03.262; 09.42811
[5]09.14
[6]09.227; 09.2211
03.1621; 03.2621