

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**

The District shall promote equal opportunities through a vigorous affirmative action program as an integral part of personnel policy and practice in the employment, development, advancement, and treatment of employees.

**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 the Office of Civil Rights, or both.<sup>1</sup>

The Superintendent shall adhere to a policy of equal employment opportunity in all personnel matters. The District shall not discriminate in recruitment, employment, retention, promotion, demotion, transfer, or dismissal on the basis of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions.<sup>24</sup>

**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.<sup>32</sup>

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 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.<sup>43</sup>

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.<sup>1</sup>

**Equal Employment Opportunity**

**REFERENCES:**

<sup>1</sup>[34 C.F.R. § 106.8](#)

<sup>2</sup><sup>1</sup>KRS 161.164; KRS Chapter 344; 42 U.S.C. 2000e, Civil Rights Act of 1964, Title VII

<sup>3</sup><sup>2</sup>29 U.S.C.A. 794

<sup>4</sup><sup>3</sup>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

**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.

ITEMS HIGHLIGHTED IN GREEN REFLECT CHANGES RECOMMENDED BY JCPS GENERAL COUNSEL.

PERSONNEL

03.1621

**- 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 meet 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.”<sup>1</sup>

**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.<sup>2</sup>

**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 sexual 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.<sup>3</sup>

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 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 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, decision maker(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<sup>5</sup>, 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.<sup>4</sup>

### **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.

### **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:**

<sup>2</sup>34 C.F.R. § 106.45

<sup>3</sup>KRS 510.020

<sup>4</sup>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:**

<sup>1</sup>03.162; 03.262; 09.42811

<sup>5</sup>09.14

<sup>6</sup>09.227; 09.2211

03.2621; 09.428111

**- CERTIFIED PERSONNEL -****Harassment/Discrimination****DEFINITION**

Harassment/Discrimination is unlawful behavior based on the race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions of an employee involving intimidation by threats of or actual physical violence; the creation, by whatever means, of a climate of hostility or intimidation, or the use of language, conduct, or symbols in such manner as to be commonly understood to convey hatred, contempt, or prejudice or to have the effect of insulting or stigmatizing an individual.

**PROHIBITION**

Harassment/Discrimination is prohibited at all times on school property and off school grounds during school-sponsored activities. This prohibition also applies to visitors to the school who may come into contact with employees and students. (Acts of harassment/discrimination based on sex may be committed by persons of the same or other sex.)

District staff shall provide for a prompt and equitable resolution of complaints concerning harassment/discrimination.

**DISCIPLINARY ACTION**

Employees who engage in harassment/discrimination of another employee or a student on the basis of any of the areas mentioned above shall be subject to disciplinary action including, but not limited to, termination of employment.

Failure by employees, to report, notify, and/or initiate an investigation of alleged harassment/discrimination, to follow approved procedures, or to take corrective action shall be cause for disciplinary action.

**PROCEDURES**

Employees who believe they or any other employee, student, or visitor is being or has been subjected to harassment/discrimination shall, as soon as reasonably practicable, report it. In each school building, the Principal is the person responsible for receiving reports of harassment/discrimination at the building level. Otherwise, reports of harassment/discrimination may be to the District Office of Compliance and Investigations.

If an employee is not assigned to a particular school, a report of harassment/discrimination may be made to the employee's immediate supervisor or to the District Office of Compliance and Investigations. Additionally, if sexual discrimination or harassment is being alleged, reports may be made directly to the District Title IX Coordinator in the District Office of Compliance and Investigations. Complaints of harassment/discrimination, shall be resolved either through an optional informal resolution process or a formal written complaint, investigation, and resolution process, as set forth *JCPS Discrimination Grievance Procedure Handbook*. Amicable resolution is encouraged at any stage of proceedings where such resolution is consistent with the provisions and objectives of this policy and related procedures.

In applicable cases, employees must report harassment/discrimination to appropriate law enforcement authorities in accordance with law.<sup>1</sup>



**Harassment/Discrimination****PROCEDURES (CONTINUED)**

The Superintendent shall develop grievance/complaint procedures:

1. For Title IX Sexual Harassment, as defined in Board Policy 03.1621, separate procedures in conformity with requirements of Board Policy 03.1621 and federal Title IX regulations; and
- 1.2. For all other types of harassment/discrimination, to be made available in the *JCPS Discrimination Grievance Procedure Handbook*, providing for:
  - a. Investigation of allegations of harassment/discrimination to include the submission of a written report of all findings of an investigation, regardless of the manner in which the complaint is communicated to a District administrator;
  - b. Establishment of measures to provide confidentiality in the complaint process;
  - c. A process to identify and employ methods to correct and prevent recurrence of the harassment/discrimination;
  - d. A process to address the complaint to a higher level of authority if a supervisory staff member is an alleged party in the harassment/discrimination;
  - e. A process where the provisions of this policy are disseminated in writing annually to all staff and students;
  - f. Annual training explaining prohibited behaviors and the necessity for prompt reporting of alleged harassment/discrimination;
  - g. Alternate methods of filing complaints for individuals with disabilities and others who may need accommodation; and
  - h. An appeal of the findings and corrective action to the Superintendent or their designee.

**PROHIBITED CONDUCT**

Depending on the circumstances and facts of the situation, and within the definition of harassment/discrimination contained in this policy, examples of conduct and/or actions that could be considered a violation of this policy include, but are not limited to:

1. Title IX Sexual Harassment, as defined in Board Policy 03.1621;
- 1.2. Any nicknames, slurs, stories, jokes, written materials or pictures that are lewd, vulgar, or profane and relate to any of the protected categories listed in the definition of harassment/discrimination contained in this policy;
- 2.3. Implied or overt threats of physical violence or acts of aggression or assault based on any of the protected categories;
- 3.4. Instances involving sexual violence;
- 4.5. Seeking to involve individuals with disabilities in antisocial, dangerous or criminal activity where they, because of disability, are unable to comprehend fully or consent to the activity; and

**Harassment/Discrimination****PROHIBITED CONDUCT (CONTINUED)**

~~5.6.~~ Destroying or damaging an individual's property based on any of the protected categories.

Sexual harassment shall include, but not be limited to:

1. Title IX Sexual Harassment, as defined in Board Policy 03.1621, and,

~~4.2.unwelcome~~ Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

**RETALIATION PROHIBITED**

No one shall retaliate against an employee or student because she/he submits a grievance which she/he believes to be true, assists or participates in an investigation, proceeding, or hearing regarding a charge of harassment/discrimination or opposes language or conduct that violates this policy.

Upon the resolution of allegations, the Superintendent or their designee shall take steps to protect employees and students against retaliation.

**OTHER CLAIMS**

When a complaint is received that does not appear to be covered by this policy, administrators shall review other policies that may govern the allegations, including but not limited to, 03.113, 03.1325 and/or 09.422.

**REFERENCES:**

<sup>1</sup>[KRS 158.156](#); KRS Chapter 344; 42 USC 2000e, Civil Rights Act of 1964, Title VII  
 29 C.F.R. 1604.11, Equal Employment Opportunity Commission (EEOC) Regulations  
 Implementing Title VII  
 20 U.S.C. 1681, Education Amendments of 1972, Title IX  
 34 C.F.R. 106.1-106.71, U.S. Department of Education Office for Civil Rights  
 Regulations Implementing Title IX  
 Genetic Information Nondiscrimination Act of 2008  
 Age Discrimination Act, 42 U.S.C. 6101-6107; 34 C.F.R. 110.25

**RELATED POLICIES:**

03.113; 03.1325; 03.16; [03.1621](#) 09.2211; 09.422; 09.42811

Adopted/Amended: 10/15/2019  
 Order #: 2019-183

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PERSONNEL

03.212

- CLASSIFIED PERSONNEL -

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The District shall promote equal opportunities through a vigorous affirmative action program as an integral part of personnel policy and practice in the employment, development, advancement, and treatment of employees.

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The Superintendent shall inform all school employees of the provisions of this policy.<sup>1</sup>

**Equal Employment Opportunity**

**REFERENCES:**

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PERSONNEL

03.2621

**- CLASSIFIED 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 meet 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.

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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.<sup>2</sup>

### **DEFINITIONS**

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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 sexual 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)**

~~4.3.~~ “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.<sup>3</sup>

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.

## **Title IX Sexual Harassment**

### **DEFINITIONS (CONTINUED)**

#### **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 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.



## **Title IX Sexual Harassment**

### **Preponderance of the Evidence**

“Preponderance of evidence” means evidence that is of greater weight or more convincing than 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.

### **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<sup>3</sup>, 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.<sup>4</sup>

### **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.<sup>6</sup>



## **Title IX Sexual Harassment**

### **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.

### **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:**

<sup>2</sup>34 C.F.R. § 106.45

<sup>3</sup>KRS 510.020

<sup>4</sup>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)

**Title IX Sexual Harassment**

**RELATED POLICIES:**

<sup>1</sup>03.162; 03.262; 09.42811

<sup>5</sup>09.14

<sup>6</sup>09.227; 09.2211

03.1621; 09.428111

**- CLASSIFIED PERSONNEL -****Harassment/Discrimination****DEFINITION**

Harassment/Discrimination is unlawful behavior based on the race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions of an employee involving intimidation by threats of or actual physical violence; the creation, by whatever means, of a climate of hostility or intimidation, or the use of language, conduct, or symbols in such manner as to be commonly understood to convey hatred, contempt, or prejudice or to have the effect of insulting or stigmatizing an individual.

**PROHIBITION**

Harassment/Discrimination is prohibited at all times on school property and off school grounds during school-sponsored activities. This prohibition also applies to visitors to the school who may come into contact with employees and students. (Acts of harassment/discrimination based on sex may be committed by persons of the same or other sex.)

District staff shall provide for a prompt and equitable resolution of complaints concerning harassment/discrimination.

**DISCIPLINARY ACTION**

Employees who engage in harassment/discrimination of another employee or a student on the basis of any of the areas mentioned above shall be subject to disciplinary action including, but not limited to, termination of employment.

Failure of employees to report, notify, and/or initiate an investigation of alleged harassment/discrimination, to follow approved procedures, or to take corrective action shall be cause for disciplinary action.

**PROCEDURES**

Employees who believe they or any other employee, student, or visitor is being or has been subjected to harassment/discrimination shall, as soon as reasonably practicable, report it. In each school building, the Principal is the person responsible for receiving reports of harassment/discrimination at the building level. Otherwise, reports of harassment/discrimination may be made to the District Office of Compliance and Investigations.

If an employee is not assigned to a particular school, a report of harassment/discrimination may be made to the employee's immediate supervisor or to the District Office of Compliance and Investigations. Additionally, if sexual discrimination or harassment is being alleged, reports may be made directly to the District Title IX Coordinator in the Office of Compliance and Investigations. Complaints of harassment/discrimination be resolved either through an optional informal resolution process or a formal written complaint, investigation, and resolution process, as set forth *JCPS Discrimination Grievance Procedure Handbook*.

In applicable cases, employees must report harassment/discrimination to appropriate law enforcement authorities in accordance with law.<sup>1</sup>

**Harassment/Discrimination****PROCEDURES (CONTINUED)**

The Superintendent shall develop grievance/complaint procedures:

1. For Title IX Sexual Harassment, as defined in Board Policy 03.2621, separate procedures in conformity with requirements of Board Policy 03.2621 and federal Title IX regulations; and
- ~~1.2.~~ For all other types of harassment/discrimination, to be made available in the *JCPS Discrimination Grievance Procedure Handbook*, providing for:
  - a. Investigation of allegations of harassment/discrimination; to include the submission of a written report of all findings of an investigation, regardless of the manner in which the complaint is communicated to a District administrator;
  - b. Establishment of measures to provide confidentiality in the complaint process;
  - c. A process to identify and employ methods to correct and prevent recurrence of the harassment/discrimination;
  - d. A process to address the complaint to a higher level of authority if a supervisory staff member is an alleged party in the harassment/discrimination;
  - e. A process where the provisions of this policy are disseminated in writing annually to all staff and students;
  - f. Annual training explaining prohibited behaviors and the necessity for prompt reporting of alleged harassment/discrimination;
  - g. Alternate methods of filing complaints for individuals with disabilities and others who may need accommodation.; and
  - h. An appeal of the findings and corrective action to the Superintendent or their designee.

**PROHIBITED CONDUCT**

Depending on the circumstances and facts of the situation, and within the definition of harassment/discrimination contained in this policy, examples of conduct and/or actions that could be considered a violation of this policy include, but are not limited to:

1. Title IX Sexual Harassment, as defined in Board Policy 03.2621;
- ~~1.2.~~ Any nicknames, slurs, stories, jokes, written materials or pictures that are lewd, vulgar, or profane and relate to any of the protected categories listed in the definition of harassment/discrimination contained in this policy;
- ~~2.3.~~ Implied or overt threats of physical violence or acts of aggression or assault based on any of the protected categories;
- ~~3.4.~~ Instances involving sexual violence;
- ~~4.5.~~ Seeking to involve individuals with disabilities in antisocial, dangerous or criminal activity where they, because of disability, are unable to comprehend fully or consent to the activity; and

## **Harassment/Discrimination**

### **PROHIBITED CONDUCT (CONTINUED)**

~~5.6.~~ Destroying or damaging an individual's property based on any of the protected categories.

Sexual harassment shall include, but not be limited to:

1. Title IX Sexual Harassment, as defined in Board Policy 03.2621; and

~~1.2.unwelcome~~ Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

### **RETALIATION PROHIBITED**

No one shall retaliate against an employee or student because she/he submits a grievance which she/he believes to be true, assists or participates in an investigation, proceeding, or hearing regarding a charge of harassment/discrimination or opposes language or conduct that violates this policy.

Upon the resolution of allegations, the Superintendent or their designee shall take steps to protect employees and students against retaliation.

### **OTHER CLAIMS**

When a complaint is received that does not appear to be covered by this policy, administrators shall review other policies that may govern the allegations, including but not limited to, 03.212, 03.2325 and/or 09.422.

### **REFERENCES:**

<sup>1</sup>KRS 158.156; KRS Chapter 344; 42 USC 2000e, Civil Rights Act of 1964, Title VII  
 29 C.F.R. 1604.11, Equal Employment Opportunity Commission (EEOC) Regulations  
 Implementing Title VII  
 20 U.S.C. 1681, Education Amendments of 1972, Title IX  
 34 C.F.R. 106.1-106.71, U. S. Department of Education Office for Civil Rights  
 Regulations Implementing Title IX  
 Genetic Information Nondiscrimination Act of 2008  
 Age Discrimination Act, 42 U.S.C. 6101-6107; 34 C.F.R. 110.25

### **RELATED POLICIES:**

03.212; 03.2325; 03.26; 03.2621; 09.2211; 09.422; 09.42811

Adopted/Amended: 10/15/2019

Order #: 2019-183

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 the Office of Civil Rights, or both.<sup>1</sup>

No student shall be denied equal educational opportunity by the Board because of his or her race color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status or disability.<sup>24</sup>

### **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 of 1990, as amended by the ADA Amendments Act of 2009, 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 rights of religious or political expression 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.

**Equal Educational Opportunities****REFERENCES:**

<sup>1</sup>[34 C.F.R. § 106.8](#)

<sup>2</sup>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. 35.101 et seq.

**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  
ITEMS HIGHLIGHTED IN GREEN REFLECT CHANGES RECOMMENDED BY JCPS GENERAL COUNSEL.

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 meet 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.”<sup>1</sup>

### **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.<sup>2</sup>

### **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 sexual 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.<sup>3</sup>

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.

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### **Formal Complaint**

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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.<sup>4</sup>

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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:

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- 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.
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### **REFERENCES:**

<sup>2</sup>34 C.F.R. § 106.45

<sup>3</sup>KRS 510.020

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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:**

<sup>1</sup>03.162; 03.262; 09.42811

<sup>5</sup>09.14

<sup>6</sup>09.227; 09.2211

03.1621; 03.2621

## **Harassment/Discrimination**

### **DEFINITION**

Harassment/Discrimination is unlawful behavior based on a student's race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, or disability. It is intimidation that is sufficiently severe, pervasive, or objectively offensive so as to adversely affect a student's education or create a hostile or abusive educational environment. It may involve threats of or actual physical violence; the creation, by whatever means, of a climate of hostility or intimidation, or the use of language, conduct, or symbols in such manner as to be commonly understood to convey hatred, contempt, or prejudice or to have the effect of insulting or stigmatizing an individual.

The provisions of this policy shall not be interpreted as applying to speech otherwise protected under the state or federal constitutions where the speech does not otherwise materially or substantially disrupt the educational process, as defined by policy 09.426, or where it does not violate provisions of policy 09.422.

### **PROHIBITION**

Harassment/Discrimination is prohibited at all times on school property and off school grounds during school-sponsored activities. This prohibition also applies to visitors to the school who may come into contact with employees and students. (Acts of harassment/discrimination based on sex may be committed by persons of the same or the opposite sex.)

District staff shall provide for a prompt and equitable resolution of complaints concerning harassment/discrimination.

### **DISCIPLINARY ACTION**

Students who engage in harassment/discrimination of an employee or another student shall be subject to disciplinary action including, but not limited to suspension or expulsion.

### **GUIDELINES**

Students who believe they or any other student, employee, or visitor is being or has been subjected to harassment/discrimination shall, as soon as reasonably practicable, report it. In each school building, the Principal is the person responsible for receiving reports of harassment/discrimination at the building level. Otherwise, reports of harassment/discrimination may be made directly to the Superintendent. Additionally, if sexual discrimination or harassment is being alleged, reports may be made directly to the District Title IX Coordinator. Complaints of harassment/discrimination, whether verbal or written, shall lead to a documented investigation and a written report.

Employees who believe prohibited behavior is occurring or has occurred shall notify the victim's Principal, who shall immediately forward the information to the Superintendent.

The Superintendent shall develop grievance/complaint procedures ~~providing for:~~

1. For Title IX Sexual Harassment, as defined in Board Policy 09.428111, separate procedures in conformity with requirements of Board Policy 09.428111 and federal Title IX regulations;

~~1.~~ 2. For all other prohibited types of harassment/discrimination, providing for:

**Harassment/Discrimination****GUIDELINES (CONTINUED)**

- a. Investigation of allegations of harassment/discrimination to include the submission of a written report of all findings of an investigation, regardless of the manner in which the complaint is communicated to a District administrator.
- b. Establishment of measures to provide confidentiality in the complaint process;
- c. A process to identify and employ methods to correct and prevent recurrence of the harassment/discrimination;
- d. A process where the provisions of this policy are disseminated in writing annually to all staff and students;
- e. Age-appropriate training explaining prohibited behaviors and the necessity for prompt reporting of alleged harassment/discrimination; and
- f. Alternate methods of filing complaints for individuals with disabilities and others who may need accommodation.

**PROHIBITED CONDUCT**

Depending on the circumstances and facts of the situation, and within the definition of harassment/discrimination contained in this policy, examples of conduct and/or actions that could be considered a violation of this policy include, but are not limited to:

1. Title IX Sexual Harassment, as defined in Board Policy 09.428111;

- ~~1-2.~~ Any nicknames, slurs, stories, jokes, written materials or pictures that are lewd, vulgar, or profane and relate to any of the protected categories listed in the definition of harassment/discrimination contained in this policy;
- ~~2-3.~~ Instances involving sexual violence;
- ~~3-4.~~ Implied or overt threats of physical violence or acts of aggression or assault based on any of the protected categories;
- ~~4-5.~~ Seeking to involve students with disabilities in antisocial, dangerous or criminal activity where the students, because of disability, are unable to comprehend fully or consent to the activity;
- ~~5-6.~~ Destroying or damaging an individual's property based on any of the protected categories; and
- ~~6-7.~~ Unwanted touching, sexual advances, requests for sexual favors, and spreading sexual rumors.

Sexual harassment shall include, but not be limited to:

1. Title IX Sexual Harassment, as defined in Board Policy 09.428111; and-

- ~~1-2.~~ ~~u~~ Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

**Harassment/Discrimination****PROHIBITED CONDUCT (CONTINUED)**

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of a student's academic advancement or participation in school programs or activities; or
- b. Submission to or rejection of such conduct by a student is used as the basis for decisions affecting the student; or
- c. Such conduct has the purpose or effect of unreasonably interfering with a student's performance or creating an intimidating, hostile, or offensive learning environment.

When sexual harassment is alleged, the District's Title IX Coordinator, as designated in the Student Support and Behavior Intervention Handbook, shall be notified.

**RETALIATION PROHIBITED**

No one shall retaliate against an employee or student because she/he submits a grievance which she/he believes to be true, assists or participates in an investigation, proceeding, or hearing regarding a charge of harassment/discrimination or opposes language or conduct that violates this policy.

**NOTIFICATIONS**

Within twenty-four (24) hours of receiving a serious allegation of harassment/discrimination, District personnel shall attempt to notify parents of both student victims and students who have been accused of harassment/discrimination.

In circumstances also involving suspected child abuse, additional notification shall be required by law. (See Policy 09.227.)

In applicable cases, employees must report harassment/discrimination to appropriate law enforcement authorities in accordance with law.<sup>1</sup>

**CONFIDENTIALITY**

District employees involved in the investigation of complaints shall respect, as much as possible, the privacy and anonymity of both victims and persons accused of violations.

**APPEAL**

Upon the completion of the investigation and correction of the conditions leading to the harassment/discrimination, any party may appeal any part of the findings and corrective actions to the Superintendent.

If a supervisor is an alleged party in the harassment/discrimination complaint, procedures shall also provide for addressing the complaint to a higher level of authority.

Failure by employees to initiate an investigation of alleged harassment/discrimination, to follow approved procedures, or to take corrective action shall be cause for disciplinary action.

**FALSE COMPLAINTS**

Deliberately false or malicious complaints of harassment/discrimination may result in disciplinary action taken against the complainant.

**Harassment/Discrimination****OTHER CLAIMS**

When a complaint is received that does not appear to be covered by this policy, administrators shall review other policies that may govern the allegations, including but not limited to, 09.422 and/or 09.426. STUDENTS 09.42811

**REFERENCES:**

<sup>1</sup>[KRS 158.156](#)

42 USC 2000e, Civil Rights Act of 1964, Title VII

Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance (U.S. Department of Education)

Franklin vs. Gwinnett County. Public Schools, 503 U.S. 60 (1992)

29 C.F.R. 1604.11, Equal Employment Opportunity Commission (EEOC)

Regulations Implementing Title VII

20 U.S.C. 1681, Education Amendments of 1972, Title IX

34 C.F.R. 106.1-106.71, U.S. Department of Education Office for Civil Rights  
Regulations Implementing Title IX

Gebser v. Lago Vista Independent School Dist., 524 U.S. 274 (1998)

Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999)

**RELATED POLICIES:**

03.162; 03.262; 09.13; 09.2211; 09.227; 09.422; [09.428111](#); 09.426; 09.438

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