

As a result of the Federal Court decision in *Tennessee v. Cardona*, 24-cv-00072 (E.D. Ky. 2025), which vacated the 2024 Title IX regulations, please note that the 2024 Title IX regulations below are NOT in effect. Accordingly, the 2020 Title IX regulations are in effect until further notice, which is located in Policy 411.1 and 411.2.

## 411.4

### **NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS or ACTIVITIES**

This policy pertains to sex discrimination, including sex-based harassment, which occurs on or after August 1, 2024. Allegations of sex-based harassment that occur on or before July 31, 2024, shall be addressed pursuant to Policy 411.1 and 411.2. Throughout this policy, unless expressly stated otherwise, reference to “Title IX” includes and incorporates the 2024 Title IX regulations (also known as the “2024 Final Rule”). The Title IX regulations are found at 34 C.F.R. Part 106. References solely to Title IX (20 U.S.C. §§ 1681 – 1688) are denoted as “Title IX (Statute).” In this policy, unless the context otherwise requires, words importing the singular include the plural and vice versa.

For purposes of this policy, both Policy 411.1 - Student Harassment and Policy 411.2 - Student Nondiscrimination are frequently referenced herein and shall only be referred to by the policy number. As identified in Policy 411.1 and 411.2, those policies shall be used for allegations of sex discrimination, including Sexual Harassment, that is based on conduct alleged to have occurred prior to August 1, 2024.

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The Board of Education of the Appleton Area School District (hereinafter referred to as “the Board” or “the District”) does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX, including in admission and employment. Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

The Board is committed to maintaining an education and work environment that is free from sex discrimination (including sex-based harassment), responding promptly and effectively when it has knowledge of conduct that reasonably may constitute sex discrimination, and addressing sex discrimination in its education program or activity. Persons who commit sex-based harassment are subject to the full range of disciplinary sanctions set forth in this policy. The Board will provide persons who have experienced sex-based harassment ongoing remedies as reasonably necessary to restore or preserve access to the District’s education program or activity.

#### **Definitions**

Words used in this policy shall have those meanings specified herein; words not defined herein shall be construed according to their plain and ordinary meanings.

**Complainant** means:

A. a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or

B. a person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX and who was participating or attempting to participate in the District's education program or activity at the time of the alleged sex discrimination.

**Complaint** means: an oral or written request to the District that objectively can be understood as a request for the District to investigate and make a determination about alleged discrimination under Title IX.

**Day(s)**: Unless expressly stated otherwise, the term "day" or "days" as used in this policy means business day(s) (i.e., a day(s) that the Board office is open for normal operating hours, Monday – Friday, excluding State-recognized holidays).

**Disciplinary sanctions** means: consequences imposed on a respondent following a determination under Title IX that the respondent violated the Board's prohibition on sex discrimination.

**Education program or activity** refers to: all the District's operations including, but not limited to, in-person and online/remote educational instruction, employment, extra-curricular activities, athletics, performances, and community engagement and outreach programs. The term applies to all activity that occurs on school grounds or on other property owned or occupied by the Board. It also includes events and circumstances that take place off school property/grounds but over which the District asserts disciplinary authority.

**Eligible Student** means: a student who has reached eighteen (18) years of age or is attending an institution of postsecondary education.

**Exculpatory evidence** means: evidence that is favorable to a respondent because it helps excuse, justify, or absolve a respondent of alleged wrongdoing and tends to establish a respondent did not engage in sex discrimination.

**Inculpatory evidence** means: evidence that links a respondent to alleged wrongdoing and tends to establish a respondent engaged in sex discrimination (i.e., has culpability).

**Parental status** means: the status of a person who, with respect to another person who is under the age of eighteen (18) or who is eighteen (18) or older but is incapable of self-care because of a physical or mental disability, is:

A. a biological parent;

- B. an adoptive parent;
- C. a foster parent;
- D. a stepparent;
- E. a legal custodian or guardian;
- F. in loco parentis with respect to such a person; or
- G. actively seeking legal custody, guardianship, visitation, or adoption of such a person.

**Party** means: a complainant or respondent.

**Peer retaliation** means: retaliation by a student against another student.

**Pregnancy or related conditions** means:

- A. pregnancy, childbirth, termination of pregnancy, or lactation;
- B. medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- C. recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

**Relevant** means: related to the allegations of sex discrimination under investigation as part of the Board's grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision-maker in determining whether the alleged sex discrimination occurred.

**Remedies** means: measures provided, as appropriate, to a complainant or any other person the District identifies as having had their equal access to the District's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the District's education program or activity after the District determines that sex discrimination occurred.

**Respondent** means: a person who is alleged to have violated the Board's prohibition on sex discrimination.

**Retaliation** means: intimidation, threats, coercion, or discrimination against any person by the District, a student, a Board member, or any other person authorized by the Board to provide aid, benefit, or service under the District's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the 2024 Title IX regulations.

**Sex-based harassment** prohibited under this policy and the 2024 Title IX regulations is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex – including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity – that is:

**A. Quid pro quo harassment.** An employee, agent, or other person authorized by the Board to provide an aid, benefit, or service under the District’s education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct.

**OR**

**B. Hostile environment harassment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the District’s education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

1. the degree to which the conduct affected the complainant’s ability to access the District’s education program or activity;
2. the type, frequency, and duration of the conduct;
3. the parties’ ages, roles within the District’s education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
4. the location of the conduct and the context in which the conduct occurred; and
5. other sex-based harassment in the District’s education program or activity.

**OR**

**C. Specific offenses.**

1. Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
2. Dating violence meaning violence committed by a person:
  - A. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - B. where the existence of such a relationship shall be determined based on a consideration of the following factors:

1. the length of the relationship;
  2. the type of relationship; and
  3. the frequency of interaction between the persons involved in the relationship.
3. Domestic violence meaning felony or misdemeanor crimes committed by a person who:
- A. is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction in which the District is located, or a person similarly situated to a spouse of the victim;
  - B. is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
  - C. shares a child in common with the victim; or
  - D. commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the applicable jurisdiction.
4. Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- A. fear for the person's safety or the safety of others; or
  - B. suffer substantial emotional distress.

**Student** means: a person eligible to enroll in, attend, or participate in an elementary (including preschool) or secondary school in the District and who is enrolled in, attending, or participating in, or is seeking/attempting to enroll in, attend, or participate in the District's education program or activity.

**Student with a disability** means: a student who is an individual with a disability as defined under Section 504 of the Rehabilitation Act of 1973, as amended ("Section 504"), or a child with a disability as defined under the Individuals with Disabilities Education Improvement Act ("IDEA").

**Supportive measures** means: individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

A. restore or preserve that party's access to the District's education program or activity, including measures that are designed to protect the safety of the parties or the District's educational environment; or

B. provide support during the Board's grievance procedures or an informal resolution process.

### **Parental, Family, or Marital Status**

The Board will not adopt or apply any policy, practice, or procedure concerning a student's current, potential, or past parental, family, or marital status that treats such students differently on the basis of sex.

### **Pregnancy or Related Conditions**

#### **Students:**

The Board prohibits discrimination in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions.

The District will not require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in the District's class, program, or extracurricular activity unless:

A. the certified level of physical ability or health is necessary for participation in the class, program, or extra-curricular activity;

B. the District requires such certification of all students participating in the class, program, or extra-curricular activity; and

C. the information obtained is not used as a basis for discrimination prohibited by Title IX or this Policy.

### **District's Responsibilities with Respect to a Student's Pregnancy or Related Conditions**

When a staff member is informed of a student's pregnancy or related conditions by the student or a person who has a legal right to act on behalf of the student, the member shall promptly provide that person with the Title IX Coordinator's contact information and inform that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the District's education program or activity, unless the employee reasonably believes the Title IX Coordinator has already been notified.

Once a student, or a person who has a legal right to act on behalf of the student, notifies the Title IX Coordinator of the student's pregnancy or related conditions, the Title IX Coordinator shall promptly take the following specific actions to effectively prevent sex discrimination and ensure equal access to the District's education program or activity:

A. Inform the student and, if applicable, the person who notified the Title IX Coordinator of the District's obligations to:

1. prohibit sex discrimination under this policy, including sex-based harassment;
2. provide the student with the option of reasonable modifications to the Board's policies, practices, or procedures because of pregnancy or related conditions;
3. allow access, on a voluntary basis, to any separate and comparable portion of the District's education program or activity;
4. allow a voluntary leave of absence;
5. provide lactation space; and
6. maintain grievance procedures that provide for the prompt and equitable resolution of complaints of sex discrimination, including sex-based harassment.

B. Provide the student with voluntary reasonable modifications to the Board's policies, practices, or procedures because of pregnancy or related conditions.

C. Allow the student to take a voluntary leave of absence from the District's education program or activity to cover, at minimum, the period of time deemed medically necessary by the student's licensed healthcare provider. To the extent that a Board maintains a leave policy for students that allows a greater period of time than the medically necessary period, the Board shall permit the student to take leave under that policy instead if the student so chooses. When the student returns to the District's education program or activity, the student will be reinstated to the academic status and, as practicable, to the extra-curricular status that the student held when the leave began.

D. Provide lactation space, which must be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.

### **Employees:**

The Board will not adopt or implement any policy, practice, or procedure, or take any employment action, on the basis of sex:

A. concerning the current, potential, or past parental, family, or marital status of an employee or applicant for employment, which treats persons differently; or

B. that is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

The Board also will not make a pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is a "Miss or Mrs."

Similarly, the Board will treat pregnancy or related conditions as any other temporary medical conditions for all job-related purposes, including commencement, duration, and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; and reinstatement; and under any fringe benefit offered to employees by virtue of employment.

If an employee has insufficient leave or accrued employment time to qualify for leave under the Board's leave policy, the Board will treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

The Board will provide reasonable break time for an employee to express breast milk or breastfeed as needed and will provide the employee with access to a lactation space, which must be a space other than a bathroom that is clean, shielded from view, free from intrusion from others, and may be used by an employee for expressing breast milk or breastfeeding as needed.

### **TITLE IX COORDINATOR(S)**

The Board designates and authorizes the following individual(s) to coordinate its efforts to comply with the Board's responsibilities under Title IX:

If employee related:

Michael Hernandez  
Assistant Superintendent of School Services  
131 E Washington St, Suite 1A  
P.O. Box 2019  
Appleton, WI 54911  
(920) 852-5300 ext. 60112  
hernandezmicha@asds.k12.wi.us

If student related:

Michael Hernandez  
Assistant Superintendent of School Services  
131 E Washington St, Suite 1A  
P.O. Box 2019  
Appleton, WI 54911  
(920) 852-5300 ext. 60112  
hernandezmicha@asds.k12.wi.us

The Board designates a member of the Leadership Team as the coordinator who is ultimately responsible for oversight over the Board's compliance with its responsibilities under Title IX.

The Title IX Coordinator may delegate specific duties to one (1) or more designees:

Julie King, Chief Human Resource Officer



131 E Washington St, Suite 1A  
P.O. Box 2019  
Appleton, WI 54911  
(920) 852-5300 ext. 60082  
kingjulie@asds.k12.wi.us

The Title IX Coordinator shall report directly to the District Administrator except when the District Administrator is a party to a complaint (i.e., either the complainant or the respondent). Under such circumstances, the Title IX Coordinator shall report directly to the Board President until the matter in which the District Administrator is a party is concluded.

Questions about this policy and policy 411.1 and 411.2 should be directed to the Title IX Coordinator.

The Title IX Coordinator shall monitor the District's education programs and activities for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX, and take steps reasonably calculated to address such barriers.

The Title IX Coordinator is responsible for notifying all participants in the District's education program or activity of how to contact its confidential employees.

### **Notice of Nondiscrimination**

The District Administrator shall provide a notice of nondiscrimination to students, parents, guardians, or other authorized legal representatives of elementary and secondary students; employees; and applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the Board. Specifically, the District Administrator shall post the notice of discrimination on the District's website and in each handbook, catalog, announcement, bulletin, and application form that it makes available to the persons listed above, or which are otherwise used in connection with the recruitment of students or employees.

## **GRIEVANCE PROCEDURES**

The Board adopts the following grievance procedures to provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in the District's education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX. These grievance procedures shall be used for all complaints of sex discrimination, including sex-based harassment, involving conduct alleged to have occurred on or after August 1, 2024.

These grievance procedures also may be used, at the discretion of the Title IX Coordinator, to investigate, address, and remedy (as necessary) conduct alleged to have occurred before August 1, 2024, that does not involve sex-based harassment, but some other form of sex discrimination prohibited by Title IX (Statute) – e.g., claims of unequal athletic opportunities, admissions discrimination, discrimination in courses or academic programs (i.e., excluding students from certain classes or programs based on their sex), pregnancy discrimination, unequal treatment based on parental, family, or marital status, discrimination in employment

(including in hiring, promotion, and compensation), and retaliation. If the Title IX Coordinator elects not to use these grievance procedures to investigate and resolve such claims, the Title IX Coordinator will still need to implement some procedures to assess – in a prompt, effective, and equitable manner – whether Title IX (Statute) was violated, and, if it was, how best to end the sex discrimination in the District’s education program or activity, prevent its recurrence, and remedy its effects.

Reports and Formal Complaints of “Sexual Harassment” (as defined in policies 411.1 and 411.2) involving conduct alleged to have occurred prior to August 1, 2024, are subject to the grievance procedures.

Under all circumstances, the Title IX Coordinator shall offer and coordinate supportive measures, as appropriate, in accordance with this policy and policies 411.1 and 411.2 if the Report or Formal Complaint involves “Sexual Harassment” alleged to have occurred prior to August 1, 2024.

If the conduct giving rise to a report or complaint of sex discrimination is alleged to have occurred both before and after August 1, 2024 (i.e., is part of a pattern of sex discrimination), the Title IX Coordinator shall determine, after consulting with the Board’s Legal Counsel, whether to use the grievance procedures contained in this policy or the grievance procedures contained in policy 411.1 and policy 411.2. The Title IX Coordinator will notify, in writing, the parties of the determination and the rationale for it. Under no circumstances, however, will a party be denied the due process to which the party is entitled based on the U.S. Department of Education-issued regulations in effect at the time the conduct alleged to violate Title IX (Statute) took place. Nothing herein shall prevent the Title IX Coordinator from using a hybrid grievance procedure that contains aspects of the grievance procedures contained in both this policy and policies 411.1 and 411.2., so that the parties receive all of the due process to which they are entitled.

### **Complaints:**

The following people may make a complaint of sex discrimination – i.e., request that the District investigate and make a determination about whether sex discrimination as prohibited under Title IX occurred:

A. a “complainant,” which includes:

1. a student or employee of the District who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
2. a person other than a student or employee of the District who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in the District’s education program or activity;

B. a parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant;

C. the District’s Title IX Coordinator.

A person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person who was subjected to the sex-based harassment, or if the Title IX Coordinator initiates a complaint consistent with the requirements of the 2024 Title IX regulations.

With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint:

- A. any student or employee of the District; or
- B. any person other than a student or employee who was participating or attempting to participate in the District's education program or activity at the time of the alleged sex discrimination.

The District may consolidate complaints of sex discrimination against more than one (1) respondent, or by more than one (1) complainant against one (1) or more respondents, or by one (1) party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one (1) complainant or more than one (1) respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

**Basic Requirements:**

The District will treat complainants and respondents equitably.

All persons involved with implementing the grievance procedures and any other aspects, including the Title IX Coordinator, the investigator, the decision-maker, and the appeal decision-maker, and the facilitator of the informal resolution process, shall be free from any conflicts of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

The Title IX Coordinator may serve simultaneously as an investigator and/or a decision-maker. If the Title IX Coordinator does not intend to serve as the investigator and decision-maker in a specific case, the Title IX Coordinator shall designate one (1) or more administrators who are appropriately trained to serve in the role. Likewise, the Title IX Coordinator shall appoint an appeal decision-maker when an appeal is filed.

In circumstances when the Title IX Coordinator and trained administrators do not have time/capacity to serve, or are prevented due to a conflict of interest, bias, or partiality, or other reasons that impair the Title IX Coordinator and other trained administrators from serving as an investigator and/or decision-maker in a specific case, the Title IX Coordinator shall, in consultation with the District Administrator or Board President (as appropriate), secure one (1) or more independent third parties to serve as the investigator and/or decision-maker. Similarly, the Title IX Coordinator has authority, in consultation with the District Administrator or Board President (as appropriate), to secure an independent third party to serve as the appeal decision-maker.

The District presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

Under ordinary circumstances, the Board expects to complete the major stages of the grievance procedures within the timeframe specified below:

- A. **Evaluation** – The Title IX Coordinator will determine whether to dismiss a complaint or investigate it within 15 days of receiving the complaint.
- B. **Investigation** – The Title IX Coordinator, or designated investigator, shall ordinarily complete the investigation (i.e., collect relevant evidence that is not otherwise impermissible) within 90 days of the Title IX Coordinator determining the charges require investigation. If, however, the Title IX Coordinator, or designated investigator, determines that the investigation is going to take longer, the Title IX Coordinator will so notify the parties and will thereafter keep the parties informed of the status of the matter on a basis. Once the Title IX Coordinator, or designated investigator, provides the parties with “access” to either the relevant and not otherwise impermissible evidence and/or an accurate description of the evidence, the parties will have 5 days to respond to the evidence or the description of the evidence unless the Title IX Coordinator approves a party’s written request for more time. If the Title IX Coordinator approves such a request, both parties will be afforded an equal amount of time to submit their response.
- C. **Determination** – After the parties either submit responses to the evidence/description of the evidence, or the deadline for submitting such responses expires, the Title IX Coordinator, or designated decision-maker, will consider the relevant and otherwise not impermissible evidence and issue a determination as to whether sex discrimination occurred. The determination shall be issued within 10 days of the deadline for the parties to submit responses to the evidence/description of the evidence unless the Title IX Coordinator approves an extension of time, which must be communicated in writing to the parties.
- D. **Appeal** – A party filing an appeal of the Title IX Coordinator’s decision to dismiss a complaint must do so within 5 days of receiving the Dismissal.

The Title IX Coordinator, or the District Administrator if the Title IX Coordinator is the individual requesting an extension, may approve reasonable extensions of the preceding timeframes on a case-by-case basis for good cause with notice to the parties.

The District will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The parties shall not engage in retaliation, including against witnesses.

The Title IX Coordinator, or designated decision-maker, shall objectively evaluate all evidence that is relevant and not otherwise impermissible – including both inculpatory and exculpatory evidence. Credibility determinations shall not be based on a person’s status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the District to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- A. evidence that is protected under a privilege recognized by Federal or State law unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- B. a party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the District obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
- C. evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent shall not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude a determination that sex-based harassment occurred.

**Notice of Allegations:**

Upon initiation of the Board's grievance procedures, the Title IX Coordinator shall notify the parties of the following:

- A. the Board's Title IX grievance procedures and informal resolution process
- B. sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- C. retaliation is prohibited; and
- D. the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. If the Title IX Coordinator, or designated investigator, provides the parties with a description of the evidence, any party may request access to the relevant and not otherwise impermissible evidence. The Title IX Coordinator will provide the requesting party with the relevant and not otherwise impermissible evidence in a timely manner.

Should the Title IX Coordinator decide, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the Title IX Coordinator will provide a supplemental written notice describing the additional allegations to be investigated.

**Dismissal of a Complaint:**

The Title IX Coordinator may dismiss a complaint of sex discrimination if:

- A. the District is unable to identify the respondent after taking reasonable steps to do so;
- B. the respondent is not participating in the District's education program or activity and is not employed by the Board;
- C. the complainant voluntarily withdraws any or all the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the District determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- D. the District determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, the Title IX Coordinator will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, the Title IX Coordinator will promptly notify, in writing, the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the Title IX Coordinator will also simultaneously notify, in writing, the respondent of the dismissal and the basis for the dismissal.

The Title IX Coordinator will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then the Title IX Coordinator will also notify the respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- A. procedural irregularity that would change the outcome;
- B. new evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- C. the Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

If the dismissal is appealed, the Title IX Coordinator will:

- A. notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;

- B. implement appeal procedures equally for the parties;
- C. ensure that the appeal decision-maker did not take part in an investigation of the allegations or dismissal of the complaint;
- D. ensure that the appeal decision-maker has been trained consistent with the 2024 Title IX regulations;
- E. provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- F. notify the parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, the Title IX Coordinator will, at a minimum:

- A. offer supportive measures to the complainant as appropriate;
- B. if the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- C. take other prompt and effective steps, as appropriate, to ensure that sex discrimination does not continue or recur within the District's education program or activity.

### **Informal Resolution Process:**

In lieu of resolving a complaint through the Board's Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. The District will not offer informal resolution to resolve a complaint that includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or when such a process would conflict with Federal, State, or local law.

### **Adding Allegations and/or Consolidating Complaints:**

If, in the course of an investigation, the District decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the original Notice of Allegations provided or that are included in a complaint that is consolidated, the Title IX Coordinator will notify the parties of the additional allegations.

### **Investigation:**

The District will provide for an adequate, reliable, and impartial investigation of complaints.

The burden is on the District — not on the parties — to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

The Title IX Coordinator, or the designated investigator and/or decision-maker, will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.

The Title IX Coordinator, or the designated investigator and/or decision-maker, will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

The District will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

- A. the District will provide the parties with an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence; If the Title IX Coordinator, or designated investigator, provides a description of the evidence, the Title IX Coordinator, or designated investigator, will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.
- B. the District will provide a reasonable opportunity to the parties to respond to the evidence or the accurate description of the evidence; and
- C. the District will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

If the investigator and decision-maker are two (2) separate individuals, the decision-maker will have an opportunity to question the parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one (1) or more allegations of sex discrimination.

If the investigator and the decision-maker are the same person, the decision-maker will have an opportunity to question the parties and witnesses in individual meetings as part of the investigation.

Before concluding the Investigation, the investigator may allow each party to propose/submit in writing relevant questions that the party wants asked of any party or witness and the investigator will review any questions submitted by the parties and ask those questions of the specific party or witness that the investigator determines – in the investigator's sole discretion – may lead to probative evidence that will assist the decision-maker in determining whether sex discrimination occurred. The investigator's decision to ask or not ask a specific question proposed by a party is not subject to review. Any questions asked must be relevant and not otherwise impermissible.

After the parties have an opportunity to review the relevant and not otherwise impermissible evidence, or an accurate description of this evidence, the decision-maker may allow each party to propose/submit in writing relevant questions that the party wants asked of any party or



witness and the decision-maker will review any relevant and not otherwise impermissible questions submitted by the parties and ask those questions of the specific party or witness that the decision-maker determines – in the decisionmaker’s sole discretion – may lead to probative evidence that will assist the decision-maker in determining whether sex discrimination occurred. The decision-maker’s decision to ask or not ask a specific question proposed by a party is not subject to review. Any questions asked must be relevant and not otherwise impermissible.

**Determination of Whether Sex Discrimination Occurred:**

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the Title IX Coordinator or designated decision-maker will:

- A. Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. This standard of proof requires the decision-maker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decision-maker, applying the applicable standard, is not persuaded by the relevant and not otherwise impermissible evidence that sex discrimination occurred, regardless of the quantity of the evidence, the decisionmaker will not determine that sex discrimination occurred.
- B. Notify the parties, in writing, of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal.
- C. Not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.
- D. If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
  - 1. coordinate the provision and implementation of remedies to a complainant and other people the District identifies as having had equal access to the District’s education program or activity limited or denied by sex discrimination;
  - 2. coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
  - 3. take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the District’s education program or activity.
- E. Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent; and

- F. Not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination of whether sex discrimination occurred.

### **Appeal of Determinations:**

If a party disagrees with the decision-maker's determination as to whether sex discrimination occurred, the party may file an appeal. Appeals must be submitted, in writing, within 5 days of the appealing party's receipt of the Determination.

A party may appeal a Determination on the following bases:

- A. procedural irregularity that would change the outcome;
- B. new evidence that would change the outcome and that was not reasonably available when the Determination was made; and
- C. the Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

The complainant may not challenge the ultimate disciplinary sanction/consequence that is imposed.

If a party appeals the decision-maker's determination, the Title IX Coordinator will:

- A. notify the parties of any appeal;
- B. implement appeal procedures equally for the parties;
- C. designate an appeal decision-maker, who will be a person who did not conduct the Investigation or render the Determination, and is appropriately trained in this policy;
  - 1. provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the decision-maker's determination;
  - 2. provide the appeal decision-maker with the relevant and not otherwise impermissible evidence along with the accurate description of the relevant evidence (if one was prepared and shared with the parties), any responses the parties submitted to the investigator related to the evidence and/or the description of the evidence (if one was prepared), and the decision-maker's determination; and
  - 3. notify the parties, in writing, of the result of the appeal and the appeal decision-maker's rationale for the outcome.

After a party files an appeal, both parties will have 5 days to submit to the appeal decision maker a statement in support of their position that they want the appeal decision-maker to consider in rendering a decision. Once the decision-maker receives each parties' statement, or

the timeline for submitting such statements expires, the appeal decision-maker will have 10 days to issue a decision on the appeal.

No new or additional evidence may be submitted during the appeal process.

The appeal decision-maker shall determine the outcome of the appeal based on the appeal decision-maker's independent review of the record (i.e., the relevant and not otherwise impermissible evidence, the feedback the parties provided to the investigator and/or decision-maker based on their review of the relevant evidence and any description of the relevant evidence that was prepared and shared with the parties, and the decision-maker's written determination) and the appeal decision-maker's application of the law and Board policy to the facts in the record. The appeal decision-maker must give due deference and due weight to the decision-maker's factual findings and credibility determinations and should not overturn them unless non-testimonial extrinsic evidence in the record justifies a contrary conclusion or unless the record read in its entirety compels a contrary conclusion. Generally, the appeal decision-maker is expected to uphold the decision maker's determination unless the appeal decision-maker determines the decision-maker's determination is unlawful, unreasonable, or against the manifest weight of the evidence. Every reasonable presumption must be made in favor of the decision-maker's determination.

The appeal decision-maker shall notify the Title IX Coordinator, in writing, of the result of the appeal and the rationale for the outcome. The Title IX Coordinator will then simultaneously notify the parties, in writing, of the result of the appeal and the appeal decision-maker's rationale for the outcome.

### **Supportive Measures:**

The District will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person's access to the District's education program or activity or provide support during the Board's grievance procedures or during the informal resolution process. For allegations of sex discrimination other than sex-based harassment or retaliation, the District's provision of support measures does not require the District, Board members, or any other person authorized to provide aid, benefit, or service on the District's behalf to alter the alleged discriminatory conduct for the purpose of providing a supportive measure

The Title IX Coordinator shall determine appropriate supportive measures on a case-by-case basis. Supportive measures may vary depending on what the Title IX Coordinator deems to be reasonably available. Supportive measures may include, but are not limited to: counseling; extensions of deadlines or other course-related adjustments; school/campus escort services; increased security and monitoring of certain areas of the campus (including school buildings and facilities); restrictions on contact between the parties; leaves of absence; changes in class, work, or extra-curricular or any other activity, regardless of whether there is or is not a comparable alternative; training and education programs related to sexbased harassment; referral to Employee Assistance Program; and other similar measures.

Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties and/or the District's educational environment, or to provide support during the Board's grievance procedures or the informal resolution process.

The District will not impose such measures for punitive or disciplinary reasons.

The Title IX Coordinator may, as appropriate, modify or terminate supportive measures at the conclusion of the grievance procedures, or at the conclusion of the informal resolution process, or the District may continue them beyond that point.

The District will provide a complainant or respondent with a timely opportunity to seek, from an appropriate and impartial employee, modification or reversal of the Title IX Coordinator's decision to provide, deny, modify, or terminate supportive measures applicable to them. The impartial employee must be someone other than the employee who made the challenged decision and must have authority to modify or reverse the decision if the impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the definition of supportive measures as set forth in the Key Definitions section of this policy.

A party may seek additional modification or termination of a supportive measure applicable to them if circumstances change materially.

The District will not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the District's education program or activity, or as otherwise permitted pursuant to the 2024 Title IX regulations.

If the complainant or respondent is an elementary or secondary student with a disability, the Title IX Coordinator shall consult with one (1) or more members, as appropriate, of the student's Individualized Education Program (IEP) team, if any, or one (1) or more members, as appropriate, of the student's Section 504 team, if any, to determine how to comply with the requirements of the IDEA and/or Section 504, in the implementation of supportive measures.

The District Administrator may place an employee respondent on administrative leave from employment responsibilities during the pendency of the Board's grievance procedures.

### **Disciplinary Sanctions and Remedies:**

Following a determination that sex-based harassment occurred, the District may impose disciplinary sanctions, which may include:

#### **For Students**

##### **A. Informal Discipline**

1. writing assignments;
2. changing of seating or location;
3. detention;

4. in-school discipline;

## **B. Formal Discipline**

1. suspension of bus riding/transportation privileges;

2. removal from co-curricular and/or extra-curricular activity(ies), including athletics;

3. emergency removal;

4. suspension for up to five (5) school days;

5. suspension for up to fifteen (15) consecutive school days if a notice of expulsion hearing has been sent;

6. suspension for up to ten (10) consecutive school days for each incident if the student is eligible for special education services under Chapter 115, Wis. Stats.;

7. expulsion;

8. permanent exclusion from co-curricular and/or extra-curricular activity(ies), including athletics or current class enrollment; and

9. any other sanction authorized by the Student Code of Conduct.

## **For Employees**

A. oral or written warning;

B. written reprimands;

C. required counseling;

D. required training or education;

E. suspension with pay;

F. suspension without pay;

G. termination and any other sanction authorized by any applicable Board Policy and/or Employee/Administrator Handbook.

The District may also provide remedies, which may include disciplinary sanctions/consequences. The Title IX Coordinator will notify the District Administrator of the recommended remedies, so an authorized administrator can consider the recommendation and implement appropriate remedies in compliance with applicable due process procedures, whether statutory or contractual.

With respect to student respondents, the Title IX Coordinator will notify the District Administrator of the recommended remedies (including disciplinary sanctions/consequences), so an authorized administrator can consider the recommendation(s) and implement an appropriate remedy(ies) in compliance with Policy 112.1 Nondiscrimination on the Basis of Disability. Discipline of a student respondent must comply with the applicable provisions of the Individuals with Disabilities Education Improvement Act (IDEA) and/or Section 504 of the Rehabilitation Act of 1972 ("Section 504"), and their respective implementing regulations.

Discipline of an employee will be implemented in accordance with Federal and State law, Board policy, and applicable provisions of any relevant employee handbooks.

### **Retaliation**

Neither the Board nor any 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 this policy, or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. Intimidation, threats, coercion, or discrimination, including initiating a disciplinary process against a person for a code of conduct violation that does not involve sex discrimination but arises out of the same facts and circumstances as a complaint or information reported about possible sex discrimination, for the purpose of interfering with the exercise of any right or privilege secured by Title IX constitutes retaliation. Peer retaliation is also prohibited. Retaliation against a person for making a complaint or participating in an investigation is a serious violation of this policy that can result in the imposition of disciplinary sanctions/consequences and/or other appropriate remedies.

Complaints alleging retaliation may be filed according to the grievance procedures set forth above. The District shall initiate its grievance procedures upon receiving any complaint alleging retaliation.

The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited under this policy.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy shall not constitute retaliation, provided, however, that a determination that sex discrimination occurred, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

### **Confidentiality**

The District will keep confidential the identity of any individual who has made a complaint of sex discrimination, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, or FERPA regulations, 34 C.F.R. part 99, or as required by law, or to carry out the purposes of 34 C.F.R. part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder (i.e., the District's obligation to maintain confidentiality shall not impair or otherwise affect the complainant's and respondent's receipt of the information to which they

are entitled related to the investigation and determination of whether sex discrimination occurred).

### **Application of the First Amendment**

The Board will construe and apply this policy consistent with the First Amendment to the U.S. Constitution. In no case will a respondent be found to have committed sex discrimination based on expressive conduct that is protected by the First Amendment.

### **Training**

All employees, investigators, decision-makers, facilitators of informal resolution process, the Title IX Coordinator(s) and designees, and other persons who are responsible for implementing the Board's grievance procedures or have the authority to modify or terminate supportive measures shall receive training related to their duties under Title IX and this Policy. The training shall be provided promptly upon hiring or change of position that alters their duties under Title IX or this policy, and annually thereafter. The training shall not rely on sex stereotypes.

Training materials must be made available for inspection upon request by members of the public.

### **Recordkeeping**

The District shall maintain for a period of seven (7) calendar years the following records:

- A. for each complaint of sex discrimination, records documenting the informal resolution process and/or the grievance procedures followed and the resulting outcome;
- B. for each notification that the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX, including notifications under 34 C.F.R. § 106.44(c)(1) or (2), records documenting the actions the District took to meet its obligations under 34 C.F.R. §106.44; and
- C. all materials used to provide the required training.

### **Outside Appointments, Dual Appointments, and Delegations**

The Board retains discretion to appoint suitably qualified persons who are not Board members to fulfill any function of the Board under this policy including, but not limited to, Title IX Coordinator, investigator, decision-maker, appeal decision maker, or facilitator of the informal resolution process.

The Board also retains discretion to appoint two (2) or more persons to jointly fulfill the role of Title IX Coordinator, investigator, decision-maker, appeal decision-maker, and facilitator of the informal resolution process.

The District Administrator may delegate functions assigned to a specific Board members under this policy including, but not limited to, the functions assigned to the Title IX Coordinator,

investigator, decision-maker, appeal decision-maker, and facilitator of the informal resolution process to any suitably qualified individual and such delegation may be rescinded by the District Administrator at any time.

### **Discretion in Application**

The Board retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the Board's interpretation or application differs from the interpretation of any specific complainant and/or respondent.

Despite the Board's reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the Board retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this policy are not contractual in nature, whether in their own right or as part of any other express or implied contract. Accordingly, the Board retains discretion to revise this policy at any time, and for any reason. The Board may apply policy revisions to an active case provided that doing so is not clearly unreasonable.

### **Legal References:**

Wisconsin State Statutes 19.21(6), 120.13, 948.01  
The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)  
Title IX of the Education Amendments of 1972 (Title IX) 20 U.S.C. 1092(F)(6)(A)(v), 20 U.S.C. 1400 et seq, 34 C.F.R. Part 106  
34 U.S.C. 12291(a)(8) 34 U.S.C. 12291(a)(10) 34 U.S.C. 12291(a)(30) 42 U.S.C. 1983 20 U.S.C. 1681 et seq.,  
Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c et seq., 42 U.S.C. 2000d et seq. 42 U.S.C. 2000e et seq.  
OCR's Revised Sexual Harassment Guidance (2001)

### **Cross References:**

Policy 112.1 - Nondiscrimination on the Basis of Disability  
Policy 411.1 - Student Harassment



Policy 411.2 - Student Nondiscrimination  
Policy 443.71- Bullying Policy

**Adoption Date: August 26, 2024**