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EXPLANATION: SEXUAL HARASSMENT UNDER TITLE IX

MSBA has created this policy in response to new regulations issued by the U.S. Department of Education (ED) interpreting Title IX of the Education Amendments of 1972, the federal law commonly known as "Title IX." This law prohibits educational institutions that receive federal funds from discriminating on the basis of sex in programs and activities. These protections apply to both employees and students.

While Title IX is more popularly known for expanding athletic opportunities for female students, the U.S. Supreme Court has found that public school districts violate Title IX if they are deliberately indifferent to known acts of sexual harassment in the district's programs and activities. *Gebser v. Lago Vista Independent School Dist.*, 524 U.S. 274 (1989)(sexual harassment of student by teacher). Further, alleged victims of sexual harassment (complainants) can sue school districts under Title IX for damages if the harassment occurs while the district exercises significant control over the alleged harasser and the harassment is "so severe, pervasive, and objectively offensive that it can be said to deprive the complainants of access to the educational opportunities or benefits provided by the school." *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 858 (1999)(sexual harassment of student by another student).

Based on these cases and a growing concern regarding sexual harassment in education, the Office for Civil Rights (OCR) of the ED embarked on a campaign to address sexual harassment in K–12 schools and colleges that receive federal funds. As the OCR increased its oversight of school districts and colleges, some became concerned that the rights of students and employees who are accused of sexually harassing others were being overlooked in the effort to protect complainants and that employees were being terminated and students were being disciplined or even expelled unfairly and without an adequate opportunity to defend themselves. Based on these concerns, the ED issued new regulations in 2020 that prohibit school districts from disciplining an employee or student accused of sexual harassment prior to the completion of a detailed grievance process. This policy provides the required grievance process.

Here are a few things you should know before your district adopts and implements this policy:

1) Sexual harassment is a growing concern in education.

As is evidenced by the thousands of comments received by the ED prior to finalizing the regulations, there is much evidence that sexual harassment continues to be prevalent in the educational setting. For example, 48 percent of U.S. students are subject to sexual harassment or assault at school before they graduate high school. American Association of University Women, *Crossing the Line: Sexual Harassment at School* (2011). Another study found that

51 percent of high school girls and 26 percent of high school boys experienced adolescent peer-on-peer sexual assault victimization. Amy M. Young et al., Adolescents' Experiences of Sexual Assault by Peers: Prevalence and Nature of Victimization Occurring Within and Outside of School, 38 Journal of Youth & Adolescence 1072 (2009).

2) This policy applies only to the most extreme types of sexual harassment.

While all forms of sexual harassment are prohibited in the educational environment, the requirements of this policy apply only to harassment that could rise to the level of a Title IX violation. That means that the harassment needs to be "so severe, pervasive, and objectively offensive" that it deprives victims of their opportunity to access the district's educational benefits. That is a high standard that is met only if the behavior is extreme (such as sexual assault) or so repetitive that it materially impacts access to education. The regulations include a very specific definition of sexual harassment, which is referred to in the policy as Sexual Harassment under Title IX. While other misbehavior of a sexual nature is still prohibited and may even be actionable under other discrimination laws such as the Missouri Human Rights Act, this particular policy applies only in situations where the requirements of Title IX may be violated.

3) "Actual knowledge" of sexual harassment is defined broadly.

According to the relevant Supreme Court cases, the district must have "actual knowledge" of the alleged sexual harassment to be liable under Title IX, but many courts have struggled to determine when exactly a school district "knows" about misconduct. The regulations, 34 C.F.R. § 106.30(a), clarify this issue by defining the term to mean "notice of sexual harassment or allegations of sexual harassment" to:

- a) The district's designated Title IX coordinator;
- b) Any official of the district who has authority to institute corrective measures on behalf of the district; or
- c) Any employee of the district.

Any person who falls into one of these categories needs to immediately report to the Title IX coordinator any allegations of sexual harassment or any circumstances that appear to be sexual harassment.

4) This policy applies to retaliation, which is defined broadly.

The regulations not only prohibit sexual harassment and discrimination on the basis of sex but also retaliation, which is defined broadly. The district or person cannot:

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...intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. 34 C.F.R. § 106.71.

MSBA is particularly concerned that an employee will use this definition of retaliation to refuse to participate in an investigation of sexual harassment and that the district will not be able to reprimand or discipline the employee for failing to assist the district in eliminating sexual harassment in the district for fear of a retaliation complaint. That seems counterproductive.

5) The district must designate a Title IX coordinator and refer to the designated person as the Title IX coordinator.

School districts have always been required to have a Title IX coordinator. School districts are also required to designate employees to coordinate the enforcement of other discrimination laws, so for years MSBA has had the district designate one compliance coordinator in policy AC for all of these laws. However, the new Title IX regulations require the district to not only designate an employee to serve this function, but state that the employee "must be referred to as the Title IX coordinator." The district can designate the same person to be the Title IX coordinator under this policy and the compliance coordinator in policy AC, but "Title IX coordinator" must be in the person's title. This is why we have required the district to specifically designate a Title IX coordinator in this policy.

6) Many different people must be involved in processing a complaint.

In policy AC, the compliance coordinator receives complaints, investigates the complaints and determines whether discrimination occurred. However, the new Title IX regulations require the people designated to receive and investigate complaints to be different than the decision-maker and the decision-maker on appeal. Further, those persons must receive specific training. In large districts with many layers of administrative staff this might not be a problem, but most districts do not have enough staff members to meet this requirement and will likely need to hire an attorney or perhaps an administrator from another district to assist in the process.

7) Alleged perpetrators (respondents) cannot be disciplined until the entire process has been completed.

The primary purpose of the new regulations is to provide the respondents the opportunity to respond to allegations of sexual harassment prior to disposition of the complaint. While the district may provide "supportive measures" to both complainants and respondents, the

regulations make it clear that the grievance process must be concluded before the respondent is disciplined or otherwise sanctioned. 34 C.F.R. 106.45(b)(1)(i). This may be difficult, particularly when student misbehavior is involved, because it could take many months to complete the grievance process.

8) Emergency removal and administrative leave are allowed.

While the district cannot discipline a respondent until after the grievance process is completed, the regulations do allow the district to remove the respondent after conducting a safety and risk analysis, but only if a) the district determines that the accused is an "immediate threat to the physical health or safety" of any person, b) the allegations of sexual harassment justify removal, and c) the respondent is provided notice and an opportunity to challenge the removal immediately following the removal. Placing an employee on administrative leave is also allowed and no detailed process is required.

9) Respondents have more rights.

The new regulations require the school district to provide the respondents much more deference, including:

- a) Providing the respondent the same access to "supportive services" as the complainant;
- b) Presuming that the respondent is not responsible until a determination is made in the grievance process;
- c) Providing the respondent the name of the complainant;
- d) Requiring the district to gather evidence, not the parties;
- e) Barring the district from prohibiting either party from discussing the allegations under investigation;
- f) Providing the accused access to all evidence collected, regardless of whether it supports the claim, even if the district does not plan to rely on the evidence;
- g) Allowing the accused an opportunity to review the investigative report and comment prior to it becoming final; and
- h) Allowing the accused to submit questions that can be posed to any party or witness and receive answers to those questions.

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10) Either party can have an advisor present.

The regulations allow either party to bring an "advisor of their choice" to any meeting or proceeding in the grievance process, and the advisor does not need to be an attorney. The district may establish restrictions regarding the participation of advisors, but those restrictions must apply to both parties. Once an advisor is designated, the advisor is entitled to receive and review evidence collected by an investigator.

11) Informal resolutions are allowed if both parties consent.

If both parties agree in writing, they may participate in an informal resolution process, such as mediation, instead of using the formal grievance process. However, this process cannot be used to resolve an allegation that an employee sexually harassed a student.

12) The regulations are controversial and will cause much litigation.

These regulations are controversial. Court cases have already been filed in opposition to the law, and it is likely more litigation will occur. MSBA strongly recommends that districts involve an attorney when allegations of sexual harassment occur.

13) The regulations require that the grievance process include reasonable timelines.

Some timelines were included in the regulations, and some were not. MSBA has included timelines in the policy and used the word "required" to denote the timelines required by the regulations. Where the district is free to create the timeline, the recommended number of days is included for district consideration.

<i>MSBA recommends that copies of this document be routed to the following areas because the content is of particular importance to them. The titles on this list may not match those used by the district. Please forward copies to the district equivalent of the title indicated.</i>					
X	Board Secretary		Business Office	X	Coaches/Sponsors
	Facility Maintenance		Food Service		Gifted
X	Human Resources	X	Principals		Library/Media Center
	Health Services		Counselor		Special Education
X	Transportation	X	Public Info/Communications	X	Technology

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SEXUAL HARASSMENT UNDER TITLE IX

The Kearney R-I School District does not discriminate on the basis of sex in its education programs and activities, including employment and admissions, as required by Title IX of the Education Amendments of 1972 (Title IX). All forms of sex-based discrimination are prohibited in the district, but this policy focuses exclusively on sexual harassment as defined in Title IX that occurs within the education programs and activities of the district. However, the district will respond promptly to investigate and address any report or complaint of sexual harassment.

"Sexual harassment under Title IX" is conduct on the basis of sex within the scope of the district's education programs or activities (as defined in this policy) 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;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or
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).

See the "Definitions Applicable to this Policy" section at the end of this document for definitions of other terms applicable to this policy.

In creating this policy, the district does not relieve any person under the district's jurisdiction from the consequences for violations of other policies and rules of the district meant to establish an environment conducive to teaching, learning, support services, work and the social and emotional well-being and development of the students entrusted to the district.

If a student alleges sexual misconduct on the part of any district employee to any person employed by the district, that person will immediately report the allegation to the Children's Division (CD) of the Department of Social Services in accordance with state law and district policy. Moreover, nothing in the policy precludes the mandatory or voluntary reporting of any suspected criminal activity to the appropriate law enforcement agency at any time.

Reporting Sexual Harassment or Title IX Retaliation

Any person may report sexual harassment regardless of whether the person is the alleged victim (complainant). However, Board members and employees must immediately report to the Title IX

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coordinator any incident or behavior that could constitute sexual harassment or retaliation in accordance with this policy. Reports may be made at any time, including during nonbusiness hours, by using the telephone number, email address or office address listed below.

The Board authorizes the following individual to serve as the Title IX coordinator(s) for the Kearney R-I School District and coordinate and implement the district's efforts to comply with the requirements of Title IX.

Assistant Superintendent of Human Resources and Student Services
150 W. State Route 92
Kearney, MO 64060
Phone (816) 628-4116/Fax (816)628-4074

In the event the Title IX coordinator is unavailable or is the respondent to a complaint, reports should instead be directed to the compliance officer or alternate compliance officer listed in policy AC.

Notice of the Policy against Discrimination on the Basis of Sex

The district will provide notice of the district's prohibition on discrimination on the basis of sex under district policy and Title IX to students, parents/guardians, employees, applicants for admission and employment, and all unions or professional associations holding collective bargaining or professional agreements with the district. The notice will:

1. Include the name or title, office address, email address and phone number of the Title IX coordinator;
2. Include information on the district's grievance procedures and grievance process;
3. State that the requirement not to discriminate extends to admission and employment; and
4. Direct inquiries to the Title IX coordinator or the assistant secretary for civil rights at the U.S. Department of Education.

The district's policy prohibiting discrimination on the basis of sex and the contact information of the Title IX coordinator(s) will be prominently displayed on the district's website and in each handbook or course catalog.

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Retaliation Prohibited

No person employed by or associated with the district will 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, participated or refused to participate in any manner in an investigation, proceeding or hearing under Title IX. While the law allows individuals to refuse to participate in a Title IX investigation, proceeding or hearing, district policy and the law require that employees immediately report to the Title IX coordinator any knowledge of an allegation of sexual harassment under Title IX, and employees can be reprimanded or disciplined for failing to do so.

Intimidation, threats, coercion or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment under Title IX but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment under Title IX, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation. Complaints alleging retaliation must be filed with the Title IX coordinator.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of the grievance proceeding is not retaliation, with the understanding that a determination of responsibility for sexual harassment is not sufficient to conclude that a party made a materially false statement in bad faith.

Intake and Classification of Reports

The Title IX coordinator will receive and review all reports of sexual harassment even if a formal complaint has not been filed. The context of behavior can make a difference between conduct falling within the technical definition of sexual harassment under Title IX and conduct of a sexual nature that is offensive or hostile in itself, but which does not constitute harassment within that definition. District policies prohibit both but, for purposes of its Title IX obligations, the district must specially address cases within the definition under this special, limited-scope policy.

If the Title IX coordinator determines that the report concerns conduct that does NOT involve sexual harassment under Title IX as that term is defined in this policy or did not occur in the district's education program or activity, the Title IX coordinator will use the grievance process in policy AC or forward the complaint to the individual responsible for implementing policy AC.

Procedures Prior to or without a Formal Complaint

When the Title IX coordinator has actual knowledge of an allegation of sexual harassment under Title IX in an education program or activity of the district, the Title IX coordinator will promptly contact the complainant and:

1. Provide information about the supportive measures available to the complainant and inform the complainant that he or she may receive supportive measures without filing a formal complaint.
2. Consider the complainant's wishes with respect to supportive measures and implement appropriate supportive measures.
3. Explain to the complainant the process for filing a formal complaint.

Parties Enrolled in Special Education

In the case of all reports of sexual harassment, if the complainant or respondent has an individualized education plan (IEP) in place, the Title IX coordinator will consult with the appropriate special education administrator(s) for assistance in determining the appropriate supportive measures based on the special needs of the student.

If the district determines that a student's specific circumstances, including disabilities, prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein, the district will pursue such measures as are available under district policy and law. Such measures will be designed to restore or preserve the student's equal access to the district's education programs or activities.

The Formal Complaint Process

Nothing in this process will interfere with any legal right of a parent/guardian to act on behalf of a complainant, respondent or party including, but not limited to, filing a formal complaint. If a student who is not an eligible student pursuant to the Federal Education Rights and Privacy Act (FERPA) files a formal complaint, the parent/guardian will be notified.

The complainant may file a formal complaint or choose not to file a formal complaint and simply receive the supportive measures.

If the complainant does not file a formal complaint, the Title IX coordinator may sign a formal complaint, initiating the grievance process. The Title IX coordinator will do so only if initiating the grievance process against the respondent is not clearly unreasonable in light of the known circumstances.

If no formal complaint is filed by the complainant or signed by the Title IX coordinator, no disciplinary action will be taken against the respondent on the grounds of sexual harassment under Title IX.

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Title IX Grievance Process upon Filing of a Formal Complaint

The district's grievance process will provide a prompt and equitable resolution of complaints and will:

1. Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent;
2. Comply with Title IX regulations before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent;
3. Require a decision-maker to objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and not make credibility determinations based on a person's status as a complainant, respondent or witness;
4. Require that all Title IX coordinators, investigators, those responsible for facilitating informal resolution processes and decision-makers not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;
5. Presume that the respondent is not responsible for the conduct until a determination of responsibility is made at the conclusion of the grievance process;
6. Follow stated timelines unless the district temporarily delays the grievance process for good cause (including, but not limited to, the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of a disability) and notify the parties in writing of the reason for a delay, if any; and
7. 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.

Notice to the Parties

When the complainant files a formal complaint, written notice will be provided to all known parties and will include:

1. Notice of the grievance process, including any informal resolution process that is available and the timeline for such process.

2. Notice of the allegations of sexual harassment under Title IX made by the complainant with sufficient details known at the time and with sufficient time to allow the respondent to prepare before the initial interview. At minimum, the details will include the identities of the parties involved in the incident, if known, the conduct and the date and location of the alleged incident if known.
3. A statement that the respondent is presumed not responsible for the conduct and that a determination of responsibility will be made at the conclusion of the grievance process.
4. A statement that parties may have an advisor of their choice, who may be an attorney.
5. A statement that the parties and their advisors will have an equal opportunity to inspect and review any evidence that is directly related to the allegations raised in the formal complaint, including evidence upon which the district does not intend to rely, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
6. Notice of any provision in the district's discipline code that prohibits knowingly making a false statement or providing false information during the grievance process.
7. If in the course of the investigation of sexual harassment under Title IX the district decides to investigate allegations about the complainant or respondent that were not in the initial notice, notice of the additional allegations will be provided to all known parties.

Range of Possible Disciplinary Sanctions and Remedies

The discipline of employees is addressed in Board policies, which are available on the district's website, and in Missouri law regarding public employees under contract. An appropriate disciplinary response for an employee found responsible for sexual harassment in this grievance process may include any suitable response available for the discipline of employees for any other violation of board policy.

The discipline of students is addressed in the policies and procedures that establish the district's comprehensive code of student conduct, which is posted on the district's website.

Remedies may include the imposition upon a responsible respondent of any additional nondisciplinary measures appropriate to effecting a remedy for sexual harassment and may include such measures as no-contact requirements, scheduling adjustments, removal or exclusion from extracurricular activities, class reassignments, limits on future class registrations, restrictions on access to various spaces in the school buildings, reassignment of attendance, and similar measures fine-tuned to respond appropriately to the circumstances surrounding a successful complainant's right to access the district's education programs and activities.

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Interim Action

Emergency Removal

The district may remove the respondent from the district's education programs and activities prior to the start or completion of the grievance procedure on an emergency basis provided that the district:

1. Performs an individualized safety and risk analysis;
2. Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and
3. Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

This provision may not be construed to modify any rights under federal disability laws.

Administrative Leave

The district may place an employee respondent on administrative leave during the pendency of the grievance process in accordance with Board policy and law. This provision may not be construed to modify any rights under federal disability laws.

Investigating a Formal Complaint

Consolidation

Formal complaints may be consolidated as to allegations of sexual harassment under Title IX against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

Investigation Process and Scope

After the formal complaint is filed, the investigator will provide an investigative report to the decision-maker. The investigation may be conducted by someone other than the Title IX coordinator. The investigator will gather evidence sufficient to reach a determination of responsibility or nonresponsibility and may not require the parties to do so.

During the investigation and the grievance process, the district will:

1. Provide equal opportunity to present witnesses, including fact and expert witnesses, and all evidence, including inculpatory and exculpatory evidence.
2. Not restrict the parties from discussing the allegations under investigation or gathering and presenting relevant evidence.
3. Provide the same opportunity for parties to have others, including an advisor of their choice, present during any grievance proceedings and related meetings, though the district may restrict the extent to which advisors may participate as long as the rules apply to both parties.
4. Provide written notice to parties who are invited or expected to participate of the date, time, location, participants and purpose of all hearings, investigative interviews or other meetings with sufficient time for the parties to prepare to participate.
5. Obtain written, voluntary consent before accessing records, such as medical records or counseling notes, that a physician, psychiatrist, psychologist or other recognized professional or paraprofessional made or maintained in connection with the provision of treatment to the party. If the party is at least 18 years old or is enrolled in postsecondary education, the party can sign on his or her own behalf. Otherwise, a parent/guardian must sign on the party's behalf.
6. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation. This includes evidence upon which the district does not intend to rely in reaching a determination of responsibility and inculpatory or exculpatory evidence, whether obtained from a party or other source.
7. Prior to completion of the investigative report and within _____ [recommended: 20] business days of the parties receiving notice of the formal complaint, send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or hard copy and provide the parties at least ten business days as required by law to submit a written response, which the investigator will consider prior to the completion of the report.
8. Create an investigative report that fairly summarizes relevant evidence and send it in an electronic or hard copy format to each party and their advisors, if any, for their review and written response. The investigative report must be sent no later than ten business days prior to the time of determination of responsibility by the decision-maker, as required by law.

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Dismissal of the Formal Complaint

If the district determines that the allegations, even if proved, would not constitute sexual harassment under Title IX as defined in this policy, did not occur in the district's education program or activity, or were not committed against a person in the United States, the formal complaint will be dismissed. The dismissal does not mean that a complaint cannot be made under another district policy or that any misbehavior will not be addressed under another policy or the district's code of conduct.

The district may dismiss a formal complaint or any allegations in a formal complaint at any time if:

1. The complainant notifies the Title IX coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations in the formal complaint;
2. The respondent is no longer enrolled in or employed by the district; or
3. Specific circumstances prevent the district from gathering evidence sufficient to reach a determination of responsibility based on the merits of the formal complaint or allegations therein.

If the formal complaint is dismissed, the district will notify the parties simultaneously. A party may appeal the dismissal of a formal complaint by submitting a written notification of appeal to the Title IX coordinator within _____ [recommended: five] business days of receiving the notice that the complaint was dismissed. If the Title IX coordinator or the investigator dismissed the complaint, the dismissal will be heard by the decision-maker. If the decision-maker dismissed the complaint, the dismissal will be heard by the appellate decision-maker. The appeal is limited to the following bases:

1. There was a procedural irregularity that affected the outcome.
2. There is new evidence that was not reasonably available at the time the dismissal was made that could affect the outcome of the matter.
3. The Title IX coordinator, investigator or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent that affected the outcome of the matter.

Time Consumed by the Investigation

It serves all parties when investigations proceed diligently and conclude within a reasonable time, which may vary case by case. Not more frequently than every other week, any party may request the Title IX coordinator to obtain and provide the parties with a basic status report on the investigator's progress toward completion.

Submission for a Determination of Responsibility and the Related Findings and Conclusions

The Title IX coordinator will designate someone to serve as the decision-maker to determine whether the respondent is responsible for sexual harassment under Title IX. The designated person may be a district administrator, an attorney or another appropriate adult. The person designated cannot have been part of the investigation.

Procedures of the Decision-Maker and Party Questions and Answers

After the parties receive the final investigative report, each party may submit to the decision-maker any written, relevant questions that the party wants asked of any party or witness. Each party will receive the answers to the questions and will be allowed time to submit limited follow-up questions. The decision-maker:

1. Will permit questions and evidence about the complainant's sexual predisposition or prior sexual behavior only if such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
2. May exclude a question that is not relevant. The party who submitted the question will receive an explanation as to why the question was judged not relevant.

Preponderance of the Evidence Standard

The decision-maker may find the respondent is responsible for the alleged sexual harassment under Title IX only when the evidence provided more clearly and more probably favors the complainant's claim (preponderance of the evidence).

Decision-Maker's Findings and Resulting Remedies

Within _____ [recommended: 20] business days after the closing of the questions period, including follow-up questions, the decision-maker will provide a written Title IX decision that includes:

1. The allegations potentially constituting sexual harassment under Title IX;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits and other methods used to gather other evidence and hearings held;
3. Findings of fact supporting the determination;

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FILE: ACA
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4. Conclusions regarding the application of the facts to the district's code of conduct and, if the student code of conduct is implicated, a referral of a student respondent to district officials charged generally with the discipline of students pursuant to Missouri law;
5. A statement of and rationale for the result as to each allegation, including a determination of responsibility, any disciplinary actions recommended to the district to be imposed on the respondent, and whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided to the complainant; and
6. The procedures and permissible bases for the complainant and respondent to appeal.

The written Title IX decision will be provided to the parties simultaneously, and a copy will be provided to the Title IX coordinator.

Finality of the Title IX Decision

If an appeal is filed, the Title IX decision becomes final on the date that the district provides the parties with the written determination of the result of the appeal. If an appeal is not filed, the Title IX decision becomes final on the date on which an appeal would no longer be considered timely.

Disciplinary Matters and Implementation of Discipline and Remedies

The Title IX coordinator is responsible for effective implementation of any remedies, including coordination with the district's disciplinary authorities. The complainant is not a party to the disciplinary procedures concerning a respondent. The administrator(s) responsible for discipline will base that discipline on the final Title IX decision, recommendations made by the decision-maker and any changes made as a result of an appeal.

Appeals of the Determinations of Responsibility in the Title IX Decision

Initiating an Appeal of Title IX Decision—Time, Contents and Assignment—Either party may appeal the determination(s) of responsibility, the dismissal of a formal complaint or any allegation in a formal complaint by notifying the Title IX coordinator in writing within _____ [recommended: five] business days of the parties receiving the written Title IX decision from the decision-maker. Appeals must be based on one or more of the following:

1. A procedural irregularity that affected the outcome of the matter.
2. New evidence that was not reasonably available at the time of the determination and that could affect the outcome of the matter.

3. The Title IX coordinator, investigator(s) or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent that affected the outcome of the matter.

The party who files the appeal will state the basis or bases for the appeal in writing. If there are multiple determinations of responsibility, the appeal should specify which ones are affected by the appeal. Appeals filed for any reason other than those listed above will not be heard.

If an appeal is filed, the Title IX coordinator will:

1. Assign the appeal to an appellate decision-maker who is not the same person as the initial decision-maker, the investigator or the Title IX coordinator.
2. Notify other parties in writing.
3. Implement the appeals process equally to all parties.
4. Give all parties the opportunity to submit a written statement in support of or challenging the outcome within _____ [recommended: five] business days of receiving the notice of appeal.

Written statements and other written documents pertaining to the appeal will be shared with all parties.

Conduct of the Appeal – The appellate decision-maker will review the findings of the initial decision-maker and review the written statements filed by the parties supporting or opposing the appeal. Within _____ [recommended: ten] business days of the close of the period for parties to file their written statements supporting or opposing the appeal, the appellate decision-maker will issue a written decision describing the result of the appeal and the rationale for the result to all parties simultaneously. The appellate decision-maker may refer an appealed issue back to a prior point in the grievance process for correction.

Process for Informal Resolution of Formal Complaints

After a formal complaint has been filed and at any time prior to reaching a determination of responsibility, the district may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. If a party requests the use of an informal resolution process, the district will provide the parties a written notice that:

1. Discloses the allegations and the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;

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2. Discloses that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint;
3. Discloses any consequences resulting from participating in the informal resolution process, including the records that, with voluntary written consent from the parties, will be maintained or could be shared; and
4. Obtains the parties' voluntary, written consent to the informal resolution process.

The informal resolution process may not be used to resolve allegations that an employee sexually harassed a student.

If the informal resolution process does not resolve the formal complaint within _____ [recommended: 30] business days after both parties consented to use the process, the Title IX coordinator will resume the grievance process unless both parties again consent to continue using the informal resolution process.

Training

Title IX coordinators, investigators, decision-makers and any person designated to facilitate an informal resolution process, should the district offer one, will receive training on the following:

1. The definition of sexual harassment under Title IX as used in this policy.
2. The scope of the district's education programs and activities.
3. How to conduct the investigation and grievance process, including determination of responsibility for sexual harassment, appeals, and informal resolution processes, as applicable.
4. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
5. Issues of relevance necessary to create an investigative report that fairly summarizes the relevant evidence.
6. Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

The district will not use training materials that rely on sex stereotypes. All training materials used by the district will promote impartial investigations and adjudications of formal complaints of sexual

harassment under Title IX. These training materials must be publicly available on the district's website or, if the district does not maintain a website, the materials must be available upon request for inspection by members of the public.

Records

The district will maintain the following records for seven years:

1. Records of each investigation of sexual harassment under Title IX, including any determination of responsibility, any disciplinary sanctions imposed on the respondent and any remedies provided to the complainant designed to restore or preserve equal access to the district's education program or activity;
2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom;
4. All materials used to train Title IX coordinators, investigators, decision-makers and any person who facilitates an informal resolution process;
5. Documentation if the district did not provide a complainant with supportive measures and the reasons why such a response was not clearly unreasonable in light of the known circumstances; and
6. Records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment under Title IX. These records must document the basis for the conclusion and that the district's response was not deliberately indifferent.

The district may add documentation of additional steps taken by the district that were not initially provided in conjunction with the initial complaint filed.

Confidentiality

Except as required by law, as permitted by the FERPA statute or regulations or to carry out the purposes of Title IX, including the conduct of any investigation, hearing or judicial proceeding arising thereunder, the district will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including:

1. Any individual who has made a report or filed a formal complaint of sexual harassment under Title IX;
2. Any complainant;

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3. Any individual who has been reported to be the perpetrator of sex discrimination;
4. Any respondent; and
5. Any witness.

The district must maintain as confidential any supportive measures provided to the complainant or respondent to the extent that maintaining such confidentiality would not impair the ability of the district to provide the supportive measures. The Title IX coordinator is responsible for coordinating the effective implementation of supportive measures.

Definitions Applicable to this Policy

The following definitions are intended for use only for the purposes of this policy.

Actual Knowledge – Notice of sexual harassment under Title IX or notice of allegations of sexual harassment under Title IX to the district's Title IX coordinator or to any district official who has the authority to institute corrective measures on behalf of the district or to any employee of the district, except where the only district official or employee with actual knowledge is also the respondent.

Business Days – Days on which the district's business offices are open.

Complainant – An individual who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX. A Title IX coordinator who signs a formal complaint is not considered a complainant.

Dating Violence – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

Determination of Responsibility – A formal finding of a decision-maker on each allegation of sexual harassment contained in a formal complaint that the respondent did or did not engage in conduct constituting sexual harassment under Title IX based on a preponderance of the evidence.

Domestic Violence – 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 Missouri; 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 Missouri.

Education Program or Activity – Any part of the district-sponsored instruction or employment in the district, including locations, events or circumstances over which the district exercised substantial control over both the respondent and the context in which the sexual harassment occurred.

Formal Complaint – A document or electronic submission filed by the complainant or signed by the Title IX coordinator alleging sexual harassment under Title IX against a respondent and requesting that the district investigate the allegations. When a complainant files a formal complaint, the document or electronic submission must have the complainant's physical or digital signature or otherwise indicate the complainant's identity. A formal complaint may be filed only by a complainant participating in or attempting to participate in the district's education programs or activities.

Informal Resolution Process – Alternative dispute resolution methods designed to resolve allegations of sexual harassment without completing the formal complaint process. The purpose of the process is to restore or preserve equal access to the district's education programs or activities for all parties. Such a process may be offered by the Title IX coordinator after a formal complaint has been filed and after consultation with the district's attorney as to whether an informal resolution process will be sufficient to meet the district's Title IX obligations.

Investigative Report – The report of the investigator of a formal complaint.

Party/Parties – Complainant(s) and respondent(s).

Remedies – Upon a final determination of responsibility, remedies are actions taken to restore or preserve equal access to the district's education programs or activities. These may include continued or new supportive measures but may also include imposition of more burdensome requirements, limitations and conditions upon the respondent, as well as disciplinary referral of the respondent, including suspension, termination or expulsion.

Report – Information provided by a complainant or any other person to the Title IX coordinator when that information indicates, suggests or alleges misconduct. This includes the intake information obtained by the Title IX coordinator prior to the filing of a formal complaint.

Respondent – An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX.

Sexual Assault – This includes all behaviors constituting forcible or nonforcible sexual offenses within the scope of the Federal Bureau of Investigation's national uniform criminal incident reporting system. At present these classifications include any sexual act directed against another

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person without the consent of the victim, including instances where the victim is incapable of consent. Sexual assault specifically includes:

1. *Rape* (Except Statutory Rape) – The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.
2. *Sodomy* – Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.
3. *Sexual Assault with an Object* – To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.
4. *Fondling* – The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.
5. *Incest* – Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
6. *Statutory Rape* – Nonforcible sexual intercourse with a person who is under the statutory age of consent pursuant to Missouri law.

Stalking – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

Supportive Measures – Nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the district's education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, safety escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

Title IX Decision – The comprehensive decisional document of the independent decision-maker concluding the Grievance Process, as may be amended or affected by the results of an appeal.

Voluntary Consent – Consent given freely and without coercion.

* * * * *

Note: The reader is encouraged to check the index located at the beginning of this section for other pertinent policies and to review administrative procedures and/or forms for related information.

Adopted:

Revised:

Cross Refs: AC, Prohibition against Discrimination, Harassment and Retaliation
GBCB, Staff Conduct
GBCC, Staff Use of Communication Devices
GBH, Staff/Student Relations
GBL, Personnel Records
GBLB, References
GCPD, Suspension of Professional Staff Members
GCPE, Termination of Professional Staff Members
GDPD, Suspension of Support Staff Members
GDPE, Nonrenewal and Termination of Support Staff Members
IGD, District-Sponsored Extracurricular Activities and Groups
IICC, School Volunteers
JFCF, Bullying
JFCG, Hazing
JG, Student Discipline
JHG, Reporting and Investigating Child Abuse and Neglect
KL, Public Concerns and Complaints
KLA, Concerns and Complaints Regarding Federal Programs

Legal Refs: §§ 105.255, 160.261, 162.068, 167.161, .171, 213.010 - .137, 290.400 - .450, RSMo.
Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681
34 C.F.R. Part 106
Bostock v. Clayton County, Georgia, 590 U.S.____, 140 S.Ct. 1731 (2020)
Obergefell v. Hodges, 576 U.S. 644 (2015)
Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999)
Faragher v. City of Boca Raton, 524 U.S. 775 (1998)

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Burlington Indust. v. Ellerth, 524 U.S. 742 (1998)
Gebser v. Lago Vista Ind. Sch. Dist., 524 U.S. 274 (1998)
Oncale v. Sundowner Offshore Serv., 523 U.S. 75 (1998)
Harris v. Forklift Syst., Inc., 510 U.S. 17 (1993)

Kearney R-I School District, Kearney, Missouri