



Book	Policy Manual
Section	Policies Adopted by the Board
Title	2266 - Nondiscrimination on the Basis of Sex in Education Programs and Activities
Code	po2266
Status	Second Reading
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POLICY 2266 - NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES

The District does not discriminate on the basis of sex in the education program or activity that it operates, and the District is required by Title IX and 34 C.F.R. ch. 106 not to discriminate in this manner. The requirement not to discriminate in the District's education program or activity extends to admission (as applicable) and to employment.

Inquiries about the application of Title IX and 34 C.F.R. ch. 106 (i.e., the federal Title IX regulations) to the District may be referred to the District's Title IX Coordinator, to the Assistant Secretary at the U.S. Department of Education, or both.

Any person with a complaint of sex discrimination (not alleging sexual harassment under Title IX as defined below) shall seek to resolve his/her complaint following the procedures set forth in Board Anti-Harassment Policies 5517, 3362, 4362, and 1662 and Board Nondiscrimination Policies 2260, 3122, 4122, and 1422. Notwithstanding the procedures in these Board Policies, any person may report sex discrimination of themselves or others at any time (including during non-business hours), in person, by mail, by telephone, by electronic mail, using the contact information listed for the Title IX Coordinator or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Reports or complaints of sexual harassment under Title IX, as defined below, will follow the procedures set forth in this policy. At the time of filing the formal complaint, the complainant must be participating in or attempting to participate in the education program or activity of the recipient.

For purposes of this policy, "School District community" means individuals subject to the control and supervision of the Board including, but not limited to, students, teachers, staff, volunteers, and Board members. "Third party" means individuals outside the School District community who participate in school activities and events authorized by the Board including, but not limited to, visiting speakers, participants on opposing athletic teams, and vendors doing business with, or seeking to do business with, the District.

Pursuant to Title IX of the Educational Amendments of 1972, "sexual harassment" is defined as conduct on the basis of sex that satisfies one or more of the following:

- A. A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e. quid pro quo); or
- B. Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or
- C. Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act.

Prohibited acts that constitute sexual harassment may take a variety of forms. Examples of the kinds of conduct that may constitute sexual harassment include, but are not limited to:

- A. unwelcome sexual propositions, invitations, solicitations, and flirtations;
- B. physical and/or sexual assault;

- C. Verbal harassment: This includes, but is not limited to, discussing sexual activity, commenting about an individual's body or appearance where such comments go beyond mere courtesy, telling "sexual jokes" or any other tasteless sexual-oriented comments, innuendoes, gestures or actions that may offend others
- D. Display of inappropriate gestures or sexually graphic or illicit materials: This includes, but is not limited to, photographs, drawings, movies, videos, websites, posters and so forth, regardless of their form.
- E. Engaging in sexual activity: This includes, but is not limited to, touching oneself or others in a sexually suggestive or sexually gratifying manner.
- F. Requests or demands for sexual favors: This includes, but is not limited to, subtle or blatant expectations, pressures or requests for any type of sexual favor which may or may not be accompanied by an implied, stated promise of preferential treatment or threat of negative consequences.
- G. Unwelcome physical contact: This includes, but is not limited to, inappropriate touching, patting, pinching, hugging, intentionally brushing against another's body, pulling at another's clothing or forcing another to a wall or corner through body position or movement.

Any person who engages in any form of harassment under this policy or any act of retaliation in violation of this policy is subject to disciplinary action, up to and including discharge from employment or removal from the District's educational program or activity.

Reports and Complaints of Harassing Conduct

Members of the School District community and third parties, which includes all staff, are encouraged to promptly report incidents of harassing conduct to an administrator, supervisor or other School District official so that the District may address the conduct before it becomes severe, pervasive, and persistent. Any administrator, supervisor, or other District official who receives such a complaint shall file it with the District's Title IX Coordinator at his/her first opportunity.

Members of the School District community or third parties who believe they have been harassed by another member of the School District community or a third party are entitled to utilize the Board's complaint process that is set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the complaining individual's participation in an educational program or activity unless the complaining individual makes the complaint maliciously or with knowledge that it is false.

Reporting procedures are as follows:

- A. Any individual who believes s/he has been the victim of sexual harassment prohibited under this policy is encouraged to report the alleged sexual harassment to the appropriate school official as identified in D below.
- B. Teachers, administrators, and other school employees who have actual knowledge of or receive notice that an employee has or may have been the victim of sexual harassment prohibited
- C. Any other person with knowledge or belief that an individual has or may have been the victim of sexual harassment prohibited by this policy shall be encouraged to immediately report the alleged acts to an appropriate school official as identified in D below.
- D. Appropriate school officials are as follows:
 - 1. Any allegation of sexual harassment under this policy shall be reported to the District's Title IX Coordinator unless the allegation is regarding the Title IX Coordinator. In such cases, the allegations shall be reported to the Superintendent, who shall assume the role of the District Title IX Coordinator for such allegations.
 - 2. Any allegation of sexual harassment under this policy regarding the Superintendent or Board Member that is received by the District Title IX Coordinator shall be referred to the School Board's legal counsel.
- E. Oral complaints shall be reduced to writing. Further, nothing in this policy shall prevent any person from reporting harassment directly to the Superintendent.
- F. To provide individuals with options for reporting harassment to an individual of the gender with which they feel most comfortable, the District may designate both a male and a female District Title IX Coordinator.

District Title IX Coordinators

The Board designates the following individuals to serve as the District's "Title IX Coordinators."

Dawn Ludwig
 Director of Human Resources
 Kimberly Area School District
 425 S. Washington Street PO Box 159
 Combined Locks WI 54113
 920-788-7900
 dludwig@kimberly.k12.wi.us

Tim Fosshage
Director of Pupil Services
Kimberly Area School District
425 S. Washington Street PO Box 159
Combined Locks, WI 54113
920-788-7900
tfosshage@kimberly.k12.wi.us

The names, titles, and contact information of these individuals will be published annually in the parent/student and staff handbooks and on the School District's website.

Complaints regarding allegations of sexual harassment may be made at any time to the District's Title IX Coordinator.

The Title IX Coordinators are assigned to accept complaints of harassment directly from any student, employee, member of the School District community or a visitor to the District, or to receive complaints that are initially filed with a school building administrator. Upon receipt of a complaint, either directly or through a school building administrator, a Title IX Coordinator has actual notice of the allegations and a response is triggered. All members of the School District community should report incidents of sexual harassment that are reported to them to the Title IX Coordinator within two (2) business days of learning of the incident.

Upon receipt of a report of sexual harassment, the Title IX Coordinator will confidentially contact the complainant to offer and discuss supportive measures. Supportive measures are individual services reasonably available that are non-punitive and non-disciplinary, that are designed to provide equal access, protect safety of complainants and respondents, and deter sexual harassment. The Title IX Coordinator will also explain the process for filing a formal complaint and determine whether a formal complaint will be filed by the complainant or signed by the Title IX Coordinator. The Title IX Coordinator will consider whether any action should be taken in the investigatory phase to protect the complainant from further harassment or retaliation including but not limited to a change of work assignment or schedule for the complainant and/or the alleged harasser. In making such a determination, the Title IX Coordinator should consult the complainant to assess his/her position to the proposed action. If the complainant is unwilling to consent to the proposed change, the Title IX Coordinator may still take whatever actions s/he deems appropriate in consultation with the Superintendent. No temporary arrangements shall be disciplinary to either the complainant or respondent. For the purposes of this policy, the complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Sexual Harassment Grievance Process

Any student, employee or other member of the School District community or visitor to the District who believes that s/he has been subjected to sexual harassment or has witnessed sexual harassment occurring at a District educational program or activity, may seek resolution of his/her complaint through the procedures as described below. Further, a process for investigating claims of sexual harassment and a process for rendering a decision regarding whether the claim of sexual harassment was substantiated are set forth below.

When making a determination of responsibility, the District adopts a preponderance of the evidence evidentiary standard. This standard is applied to all formal complaints of sexual harassment, whether the respondent is a student or an employee.

All timelines in the complaint/grievance process are intended to be guidelines to assure that the investigation and grievance process proceeds with all deliberate efficiency. Timelines may be extended by the District for good cause.

Filing of a Formal Complaint

An individual who believes s/he has been subjected to sexual harassment hereinafter referred to as the "complainant," may file a formal complaint, either orally or in writing with the Title IX Coordinator. If the complaint is regarding a Title IX Coordinator, the complaint shall be reported to the Superintendent, who shall assume the role of the Title IX Coordinator for such complaints.

Due to the sensitivity surrounding complaints of harassment, timelines are flexible for initiating the complaint process; however, individuals should make every effort to file a complaint within thirty (30) calendar days after the conduct occurs while the facts are known and potential witnesses are available. If a Complainant informs a Principal, Superintendent, or other employee, either orally or in writing, about any complaint of discrimination or retaliation, that employee must report such information to the Title IX Coordinator within two (2) business days.

All written complaints must include the following information to the extent it is available: identification of the parties, date and location of alleged incident, a description of the alleged conduct, and a list of potential witnesses. At the time of filing the formal complaint, the complainant must be participating in or attempting to participate in the education program or activity of the recipient.

If the complainant is unwilling or unable to provide a written statement including the information set forth above, the Title IX Coordinator shall ask for such details in an oral interview. Thereafter the Title IX Coordinator will prepare a written summary of the oral interview, and the complainant will be asked to verify the accuracy of the reported charge by signing the document. A formal complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment. The Title IX Coordinator will take the complainant's wishes with respect to whether the District conducts a formal investigation into the allegations. The Title IX Coordinator will sign the complaint if the Title IX Coordinator determines it would be clearly unreasonable in light of the circumstances not to conduct a formal investigation. When the Title IX Coordinator determines that an investigation is necessary even where the complainant (i.e., the alleged victim) does not want such an investigation, the grievance process can proceed without the complainant's participation; however, the complainant will still be treated as a party in the grievance process.

Once the complaint process begins, the investigation will be completed in a timely manner (ordinarily, within fifteen (15) business days of the complaint being received).

Investigation Process

Although certain circumstances may require more time, the Title IX Coordinator will provide notice to the individual alleged to have engaged in the harassing or retaliatory conduct, hereinafter referred to as the "respondent," and the victim, hereinafter referred to as the "complainant," of the allegations contained in the complaint within two (2) business days of receiving a complaint. The notice shall include: (1) a description of the allegations of sexual harassment potentially constituting sexual harassment; (2) a statement that the accused is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made after the grievance process; (3) a statement that the complainant and the accused may have an advisor of their choice, who may be, but is not required to be, an attorney; (4) a statement that the complainant and the accused may inspect and review evidence collected during the investigation; and (5) a reference to a provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

The Respondent is not entitled to receive a copy of any written complaint unless the Title IX Coordinator determines it is appropriate to do so; however, the respondent will be informed about the nature of the allegations. The Title IX Coordinator shall inform the respondent of the requirements of this policy, which may include providing the respondent with a copy of this policy or information about where to find it. The respondent shall be afforded the opportunity to submit a written response to the complaint. The Title IX Coordinator shall inform the respondent of the respondent's deadline to provide the Title IX Coordinator with the written response to the allegations in the complaint.

Within five (5) business days of receiving the formal complaint, the Title IX Coordinator will designate an investigator to conduct a formal investigation to determine whether the complainant has been subject to offensive conduct/harassment. The Title IX Coordinator may assign himself/herself as the investigator.

Although certain cases may require additional time, the investigator will attempt to complete an investigation into the allegations of harassment within twenty (20) calendar days of receiving the formal complaint. The investigation will include:

- A. interviews with the complainant;
- B. interviews with the respondent;
- C. interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations, as determined by the investigator;
- D. consideration of any documentation or other evidence presented by the complainant, respondent, or any other witness which is reasonably believed to be relevant to the allegations, as determined by the investigator.

Prior to any investigatory interviews, meetings, or hearings the investigator must send each party a written notice of the date, time, and location of such interviews or meetings. During the investigation process, the parties will have an equal opportunity to present fact and expert witnesses in addition to other inculpatory and exculpatory evidence. The parties are not restricted from discussing the allegations or gathering evidence. Evidence of any party's medical, psychological, or similar records may not be accessed or used, unless the party provides voluntary, written consent to do so. Evidence regarding prior sexual history shall not be offered, unless to prove consent or someone other than the respondent committed the alleged misconduct.

At the conclusion of the investigation, the investigator will prepare a report. Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection in an electronic format or hard copy, and the parties will have 10 calendar days to submit a written response. The investigator shall consider the response of both parties and complete the report. The report must fairly summarize the relevant evidence gathered during the investigation and make recommendations. The investigator's recommendations must be based upon the totality of the circumstances, including the ages and maturity levels of those involved. The report will also identify the decision-maker who will make a determination regarding responsibility. The final report will be sent simultaneously to the parties, the parties' advisors, if any, and the decision-maker.

The parties will have 10 calendar days after the investigative report is sent to review the final report, submit a written response to the decision-maker, and submit written relevant questions to the decision-maker that the party wants asked of any party or witness. The decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant. The decision-maker will provide each party with the answers, and the parties will have two (2) calendar days to submit limited follow-up questions.

Before the decision-maker makes a final decision, the decision-maker will give both parties the opportunity to submit a final statement.

The decision-maker then will have fifteen (15) calendar days to make a determination regarding responsibility and prepare a written decision. A copy of the decision-maker's final decision will be sent to both parties simultaneously.

Appeals

If either party is not satisfied with the resolution of the complaint, s/he may appeal to the Superintendent or his/her designee within fifteen (15) working days of receiving the decision-maker's final decision. The appeal must be in writing and include a statement explaining why the complainant disagrees with the decision-maker's resolution of the complaint.

The Superintendent or his/her designee shall review the record and, at his/her discretion, may meet with the complainant and other individuals. Within fifteen (15) working days of receiving the appeal, the Superintendent or his/her designee shall determine what action to take, if any, and shall respond to the complainant in writing.

If either party is not satisfied with the Superintendent's review and decision, an appeal may be filed with the Board of Education within ten (10) working days after receipt of the Superintendent's Decision. The Board of Education shall review the appeal and, at its discretion, may meet with the parties. The Board of Education shall respond to the appeal within fifteen (15) working days after the receipt of the appeal.

Nothing in this policy shall be construed to prevent an employee from bringing a complaint before the Equal Employment Opportunity Commission or the Wisconsin Equal Rights Division.

Privacy/Confidentiality

The School District will employ reasonable efforts to protect the rights of the Complainant, the Respondent(s), and all the witnesses as much as possible, consistent with the Board's legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligation in an investigation of sexual harassment. The School District will respect the privacy of the complainant, the respondent, and all witnesses in a manner consistent with the School District's legal obligations under State and Federal law. Confidentiality, however, cannot be guaranteed. All complainants proceeding through the formal investigation process should be advised that their identities may be disclosed to the respondent.

During the course of an investigation, the Title IX Coordinator will determine whether confidentiality during the investigation process is necessary to protect the interests and reputations of those involved and/or to protect the integrity of the investigation, and if so, shall instruct all members of the School District community and third parties who are interviewed about the importance of maintaining confidentiality. Any individual who is interviewed as part of a harassment investigation is expected not to disclose any information that s/he learns or that s/he provides during the course of the investigation.

Directives During Investigation

The Title IX Coordinator may recommend to the decision-maker placing any employee involved in an investigation under this policy on administrative leave pending resolution of the matter or removing any student involved in an investigation under this policy from an educational program or activity, to protect others from threat to physical health or safety. If the Superintendent is the Respondent, the Title IX Coordinator shall make such recommendation to the Board. Every individual interviewed in the course of an investigation is required to provide truthful responses to all questions. Failure to do so may result in disciplinary action.

Sanctions and Monitoring

The Board shall vigorously enforce its prohibitions against sexual harassment by taking appropriate action reasonably calculated to stop the harassment and prevent further such harassment. While observing the principles of due process, a violation of this policy or a determination of responsibility may result in disciplinary action up to and including the discharge of an employee. All disciplinary action will be taken in accordance with applicable law. When imposing discipline, the Superintendent shall consider the totality of the circumstances. In those cases where harassment is not substantiated, the Board may consider whether the alleged conduct nevertheless warrants discipline in accordance with other Board policies.

All sanctions imposed by the Board and/or Superintendent shall be reasonably calculated to end such conduct, prevent its reoccurrence, and remedy its effects.

Dismissal

If the conduct alleged in the formal complaint would not constitute sexual harassment under Title IX if proven, did not occur during/in a District educational program or activity, or did not occur in the United States, the District must dismiss the complaint for the purposes of Title IX. The dismissal of a formal complaint for the purposes of Title IX does not preclude the District from taking action under other District policies.

The District may dismiss a formal complaint if the complainant informs the Title IX Coordinator in writing that s/he wishes to withdraw the complaint, if the respondent is no longer enrolled or employed by the school, or if circumstances prevent the District from gathering evidence to reach a determination.

In the event of a dismissal, the Title IX Coordinator must provide the parties written notice of the dismissal and the reasons for the dismissal.

Informal Resolution

The District may offer an informal resolution process so long as both parties give voluntary and informed written consent. An informal resolution process may only be offered after a formal complaint is filed. If an informal resolution process has begun, any party has the right to withdraw from the informal resolution process and resume the above stated grievance process.

The District may not require waiver of the right to formal investigation and adjudication as a condition of enrollment or employment.

Informal resolution processes cannot be offered to resolve allegations that an employee sexually harassed a student.

Miscellaneous

The District shall conspicuously post a notice including this policy against harassment in each school in a place accessible to the School District community and members of the public. This notice shall also include the name, mailing address, email address and telephone number of the Title IX Coordinators, the name, mailing address and telephone number of the State agency responsible for investigating allegations of discrimination in educational opportunities, and the mailing address and telephone number of the United States Department of Education, Office for Civil Rights.

A summary of this policy and any related administrative procedures shall appear in the student and employee handbooks and shall be made available on the District's website.

The Board will develop a method of communicating this policy with the School District community. Training on the requirements of non-discrimination and the appropriate responses to issues of harassment will be provided to the School District on an annual basis, and at such other times as the Board in consultation with the Superintendent determines is necessary or appropriate.

The District will train investigators and decision-makers on issues of relevance and how to apply the rape shield protections afforded to complainants. The rape shield protections deem any questions or evidence about a victim's prior sexual behavior irrelevant, unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.

All training materials will be made available to the public upon request.

This policy shall be reviewed at least annually for compliance with local, State, and Federal law. The Board will respect the privacy of the complainant, the individuals against whom the complaint is filed, and the witnesses as much as practicable, consistent with the Board's legal obligations to investigate, to take appropriate action, and to conform with any discovery, disclosure, or other legal obligations.

Retention of Investigatory Records and Materials

All individuals charged with conducting investigations under this policy shall retain all information, documents, electronically stored information ("ESI"), and electronic media created and received as part of an investigation, including, but not limited to:

- A. all written reports/allegations/complaints/statements;
- B. narratives of all verbal reports, allegations, complaints, and statements collected;
- C. a narrative of all actions taken by District personnel;
- D. any written documentation of actions taken by District personnel;
- E. all documentary evidence, including written or electronic;
- F. witness statements in written, digital, or audio form;
- G. e-mails, texts, or social media posts pertaining to the investigation;
- H. written disciplinary sanctions issued to students or employees and a narrative of verbal disciplinary sanctions issued to students or employees for violations of the policies and procedures prohibiting discrimination or harassment;
- I. dated written determinations to the parties;
- J. dated written descriptions of verbal notifications to the parties;
- K. written documentation of any interim measures offered and/or provided to complainants, including no contact orders issued to both parties, the dates issued, and the dates the parties acknowledged receipt; and
- L. documentation of all actions taken, both individual and systemic, to stop the discrimination or harassment, prevent its recurrence, eliminate any hostile environment, and remedy its discriminatory effects.

The information, documents, ESI, and electronic media retained may include public records and records exempt from disclosure under Federal and/or State law (e.g., student records).

The information, documents, ESI, and electronic media created or received as part of an investigation shall be retained for not less than seven (7) years, but longer if required by the District's records retention schedule.

Legal

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