

## Sex Discrimination

GAAC

(See GAAD, GAF, GARIA, JDDC, JGEC and KN)

The board of education is committed to providing a positive and productive working environment, free from discrimination on the basis of sex, including sex-based harassment. The district does not discriminate on the basis of sex in employment, and all forms of sex discrimination, including sex-based harassment, is prohibited under Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, the Pregnant Workers Fairness Act of 2023, and the Kansas Act Against Discrimination. As provided in the Title IX regulations, discrimination on the basis of sex includes, but is not limited to, discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Inquiries about Title IX may be referred to the district's Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights at (800) 421-3481 or at [OCR@ed.gov](mailto:OCR@ed.gov), or both. The district's Title IX Coordinator is the Superintendent-USD 403, PO Box 227, 301 West Eagle, Otis, KS 67565, 785-387-2201.

The district's nondiscrimination policy and grievance procedures can be located at <https://www.usd403.org/policies>.

To report information about conduct that may constitute sex discrimination or make a complaint of sex discrimination under Title IX, please refer to the school district office, 301 West Eagle, Otis, Kansas.

### Definitions

The following definitions apply in responding to complaints of sexual discrimination, including sex-based harassment, as defined by Title IX of the Education Amendments of 1972 and its regulations.

“Complainant” means (1) a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or any of its regulations; or (2) 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 or its regulations 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 or its regulations.

“Respondent” means a person who is alleged to have violated the district's prohibition on sex discrimination.

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“Sex-based Harassment” means sexual harassment and other harassment on the basis of sex, that is:

- (1) *Quid pro quo harassment.* An employee, agent, or other person authorized by the district 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;
- (2) *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:
  - (i) The degree to which the conduct affected the complainant’s ability to access the district’s education program or activity;
  - (ii) the type, frequency, and duration of the conduct;
  - (iii) 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;
  - (iv) the location of the conduct and the context in which the conduct occurred; and
  - (v) other sex-based harassment in the district’s education program or activity; or
- (3) Specific offenses.
  - (i) 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;
  - (ii) 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;
- (iii) 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 of the district, 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 jurisdiction; or
- (iv) 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.

Complaints of Sex Discrimination

The following people have a right to make a complaint of sex discrimination, including sex-based harassment, requesting that the recipient investigate and make a determination about alleged discrimination under Title IX and its regulations:

- A complainant;
- a parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant;
- the Title IX Coordinator; and
- if the complaint of sex discrimination does not involve sex-based harassment, any student, employee, or any other person who was participating or attempting to participate in the district’s education program or activity at the time of the alleged sex discrimination.

Any staff member who believes that the staff member has been subjected to sex discrimination should report the alleged conduct to the Title IX Coordinator, their immediate supervisor, or other administrator.

All employees receiving reports of conduct that may constitute sex discrimination from a student or other staff member shall notify the Title IX Coordinator.

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The Title IX Coordinator may consolidate complaints of sex discrimination when the allegations of sex discrimination arise out of the same facts or circumstances.

### District's Response to Reports of Sex Discrimination

The district will respond promptly and effectively to reports of conduct that reasonably may constitute sex discrimination, including sex-based harassment, of which the district has knowledge, through a Title IX coordinator designated and authorized to oversee the district's responsibilities and ensure its consistent compliance with its responsibilities under Title IX. As appropriate, the Title IX Coordinator may delegate duties required by Title IX and its regulations to one or more designees, so long as one Title IX Coordinator retains ultimate oversight over the district's responsibilities and ensures the district's consistent compliance with its responsibilities under Title IX and its regulations.

When notified of conduct that reasonably may constitute sex discrimination, the Title IX Coordinator shall promptly and effectively act to end any sex discrimination in the district's education program or activity, prevent its recurrence, and remedy its effects. Once such a report is received, the Title IX Coordinator will do the following:

- Treat the complainant and respondent equitably;
- offer and coordinate supportive measures to the parties, as appropriate;
- once such a report is received, the Title IX Coordinator will first offer and coordinate supportive measures to the parties, as appropriate.
- notify the complainant or, if the complainant is unknown, the individual who reported the conduct, within 10 days of receiving the report, of the grievance procedures and informal resolution process, if available and appropriate;
- if a complaint is made, notify the respondent of the grievance procedures and informal resolution process, if available and appropriate, and, unless the Title IX Coordinator reasonably determines that the conduct as alleged could not constitute sex discrimination under Title IX, initiate and follow the grievance procedures or the informal resolution process, if available, appropriate, and requested by all parties;
- in the absence of a complaint or the withdrawal of any or all of the allegations in a complaint, and in the absence or termination of an informal resolution process, determine whether to initiate a complaint of sex discrimination that complies with the grievance procedures herein described;

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- if the Title IX Coordinator is initiating a complaint, notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others, including by providing supportive measures; and
- regardless of whether a complaint is initiated, take other appropriate, prompt, and effective steps to effectuate the remedies provided to an individual complainant, if any, to ensure that sex discrimination does not continue or recur within the district's education program or activity.

In determining whether the Title IX Coordinator should initiate a complaint, the Title IX Coordinator must consider:

- The complainant's request not to proceed with initiation of a complaint;
- the complainant's reasonable safety concerns regarding initiation of a complaint;
- the risk that additional acts of sex discrimination would occur if a complaint is not initiated;
- the severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- the age and relationship of the parties, including whether the respondent is an employee of the district's;
- the scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
- the availability of evidence to assist the decisionmaker in determining whether sex discrimination occurred; and
- whether the district could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures.

If, after considering these factors, the Title IX Coordinator determines the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other person, or that the conduct as alleged prevents the district from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a complaint.

### Complaint Process Requirements

The process for filing a complaint follows:

- At the time of the misconduct alleged in the complaint, the complainant had to have been participating in or attempting to participate in the education program or activity of the district.
- Although it is not required that a complaint be in writing, it is requested the complaint be filed in writing and contain the name, address, email address, and phone number of the person filing it. The complaint should briefly describe the alleged violation. Filing of the complaint with the Title IX Coordinator may be done in person, by mail, or by email. If an individual does not wish to file a written complaint, and the matter has not been adequately resolved, the Title IX Coordinator may initiate the complaint. Forms for filing written complaints are available in each school building office and the central office.
- A complaint should be filed as soon as possible after the conduct occurs, but not later than 180 calendar days after the complainant becomes aware of the alleged violation, unless the conduct forming the basis for the complaint is ongoing.
- Unless the complaint is dismissed or handled through the informal resolution process, an investigation shall follow the filing of the complaint. If the complaint is against the superintendent, the Title IX Coordinator or the board shall appoint an investigating officer. In other instances, the investigation shall be conducted by a qualified individual designated by the Title IX Coordinator.
- The investigation shall be thorough. The complainant, the respondent, and any witnesses interviewed will be afforded an opportunity to submit written or oral evidence relevant to the complaint.

#### Complaint Evaluation

Upon receipt of a complaint alleging sex discrimination, including, but not limited to, one alleging sex-based harassment, the Title IX Coordinator shall determine if the complaint shall be investigated or dismissed in accordance with this policy.

#### Dismissal of a Complaint

The Title IX Coordinator may dismiss a complaint of sex discrimination for any of the following reasons:

- The Title IX coordinator is unable to identify the respondent after taking reasonable steps to do so;
- the respondent is not participating in the district's education program or activity and is not employed by the district;

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- the complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the Title IX coordinator determines that, without the complaint's withdrawn allegations, the conduct alleged in the complaint, if any, would not constitute sex discrimination under Title IX or its regulations even if proven;
- the Title IX Coordinator determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX or its regulations. Prior to dismissing the complaint for this reason, the Title IX Coordinator must make reasonable efforts to clarify the allegations with the complainant.

Regardless of dismissal, the Title IX Coordinator is still responsible for ensuring that supportive measures are offered to the parties, as required by Title IX and its regulations, and for taking other appropriate, prompt, and effective steps to ensure that sex discrimination does not continue to recur within the district's education program or activity.

Upon dismissal, the Title IX Coordinator must promptly notify the complainant of the basis for the dismissal, that the dismissal may be appealed to the Title IX Coordinator within 10 days of the date of the notice of dismissal, and the bases on which the appeal may be filed. If the dismissal occurs after the respondent has been notified of the allegations, then the Title IX Coordinator must also notify the respondent of this information promptly following notification to the complainant or simultaneously if notice is provided in writing.

A request for an appeal of a dismissal may be based on any of the following:

- A procedural irregularity that would change the outcome;
- new evidence that would change the outcome and that was not reasonably available when the complaint was dismissed; and
- the Title IX Coordinator, investigator, or decisionmaker 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.

Such a request must be received by the Title IX Coordinator within 10 days of the date of the notice of dismissal.

Within 10 days of receiving the request for an appeal, the Title IX Coordinator shall appoint an appeal hearing officer who did not take part in any investigation of the allegations or dismissal of the complaint, and notify the parties of the appeal, including notice of the allegations consistent with the notice provided in any grievance procedure if notice was not previously provided to the respondent. Once appointed, the appeal hearing officer will provide the parties with the opportunity to provide a written

statement in support of or challenging the outcome. Within 20 days of the appeal hearing officer's appointment, the appeal hearing officer will notify the parties of the result of the appeal and the rationale for the result.

While this appeal process establishes reasonable timeframes, applicable law and this policy allow for the reasonable extension of timeframes on a case-by-case basis for good cause, with notice to the parties that includes the reason for the delay.

#### Supportive Measures

Supportive measures are individualized measures designed to restore or preserve equal access to the education program or activity, including measures to protect the safety of the parties or the district's educational environment or to provide support during the grievance procedure or informal resolution process. Such measures shall be offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent. Supportive measures should not be disciplinary, punitive, or unreasonably burdensome to either party. These measures may include counseling, extensions of deadlines or course-related adjustments, modifications of work or class schedules, escort services, mutual restrictions on contact between the parties, changes in classes or extracurricular or other activity regardless of whether there is or is not a comparable alternative, excused absences, increased security and monitoring, training and education programs related to sex-based harassment, and other similar measures.

The district will treat the complainant and respondent equitably in the offering of supportive measures. District staff members shall not disclose information about any supportive measures to persons other than to whom they apply unless necessary to provide the supportive measure, to restore or preserve a party's access to the education program or activity, or as allowed by applicable law. If the complainant or respondent is an elementary or secondary student with a disability, one or more members of the student's Individualized Education Program (IEP) and/or Section 504 team will be consulted in the implementation of supportive measures for the student.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. The district may modify or terminate supportive measures, as appropriate, at the conclusion of the grievance procedure or informal resolution process or may continue them.

Following the Title IX Coordinator's decision regarding supportive measures, each party will be provided with the opportunity to seek modification or reversal of the Title IX Coordinator's decision to provide, deny, modify, or terminate supportive measures applicable to them through an impartial employee who did not make the challenged decision and has the authority to modify or reverse the decision, if necessary. Each party will also be provided with the opportunity to seek additional

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modification or termination of a supportive measure applicable to them if there is a material change in circumstances.

### Complaint Notice Requirements

Upon the filing of a complaint, the Title IX Coordinator shall provide written notice to the known parties including:

- A description of the allegations of sex discrimination including sufficient details to prepare a response, the identities of the parties involved, if known, the conduct allegedly constituting sex discrimination, and the date and location of the alleged incident, if known;
- an explanation of the district's investigation procedures, including any informal resolution process; and
- a statement that retaliation is prohibited; and a statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence, and, if the recipient provides a description of the evidence, the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

If, in the course of an investigation, the scope of the investigation is broadened to include additional allegations of sex discrimination by the respondent toward the complainant that are not included in the original notice described herein or that are included in a complaint that has been consolidated as herein described, the district must provide notice of the additional allegations to known parties.

### General Grievance Procedure Requirements

The following grievance procedures provide for the prompt and equitable resolution of complaints made by students, employees, 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 or its regulations.

Unless complaints are dismissed by the Title IX Coordinator in accordance with law and this policy, complaints received will be investigated to determine whether, under the totality of the circumstances, the alleged behavior constitutes sexual discrimination. Unacceptable student or staff conduct may or may not constitute sex discrimination, depending on the nature of the conduct and its severity, pervasiveness, and offensiveness. Behaviors which are unacceptable but do not constitute sex discrimination may still provide grounds for discipline.

If a complainant or respondent is an elementary or secondary student with a disability, the Title IX Coordinator shall consult with one or more members of the student's IEP and/or Section 504 team throughout the implementation of the grievance process described herein.

The complainant(s) and respondent(s) will be treated equitably during these procedures. It is presumed that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of these procedures.

While this grievance process establishes reasonable timeframes, applicable law and this policy allow for the reasonable extension of timeframes on a case-by-case basis for good cause, with notice to the parties that includes the reason for the delay.

Reasonable steps will be taken to protect the privacy of the parties and witnesses during the grievance procedures and to prevent and address the parties' unauthorized disclosure of information and evidence obtained through the grievance procedures, except as required for administrative proceedings or litigation related to the complaint of sex discrimination. However, these steps will not restrict the ability of the parties to obtain and present evidence; consult with their family members, confidential resources, advisors, or representatives; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including retaliation against witnesses.

#### Informal Resolution Process

At any time prior to determining whether sex discrimination occurred through the grievance process described herein, the district may offer an informal resolution process, such as mediation, that does not involve a full investigation and determination whether sex discrimination occurred. The informal resolution process is not available if the complaint includes allegations that an employee engaged in sex-based harassment of a student. Similarly, the Title IX Coordinator may decline to offer the informal resolution process at the coordinator's discretion.

The informal resolution process may be facilitated by a trained educational professional, consultant, or other individual who would not be the investigator or decisionmaker in the grievance procedure, were it to proceed. This person shall be selected by the Title IX Coordinator. The following conditions apply to the informal resolution process.

- The parties are provided a written notice disclosing the allegations, the requirements of the informal resolution process, the parties' rights to withdraw from the process and initiate or resume the regular grievance procedure, information on when it may preclude the parties from resuming a formal complaint arising from the same allegations, the terms that may be

requested or offered, and what information the district will maintain and how it may be disclosed.

- The parties must voluntarily and in writing consent to the informal resolution process.
- If the matter is resolved to the satisfaction of the parties, the facilitator shall document the nature of the complaint and the proposed resolution, have both parties sign the informal resolution agreement and receive a copy, and forward it to the Title IX Coordinator. Within 20 days after the complaint is resolved with an informal resolution agreement, the Title IX Coordinator shall contact the complainant and respondent to determine if the resolution of the matter remains acceptable. If the matter is not resolved, or if any party does not believe the resolution remains acceptable within 20 days after the informal resolution agreement is executed by the parties, the individual or the Title IX Coordinator may proceed with the formal grievance process.

#### The Formal Grievance Process

The board has adopted the following procedures in order to provide adequate, reliable, and impartial investigation of all sex discrimination complaints.

The Title IX Coordinator, investigator, decisionmaker, and other persons who are responsible for implementing the grievance procedures, any appeal, or who have the authority to modify or terminate supportive measures shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. While the Title IX Coordinator cannot serve as the investigator for the formal grievance procedure, either the Title IX Coordinator or the investigator can serve as the decisionmaker.

To ensure a complete and thorough investigation and determination of whether sex discrimination occurred, the investigator and decisionmaker must adhere to the following requirements.

The investigator shall:

- Ensure that the preponderance of the evidence burden of proof and the burden of gathering evidence sufficient to reach a determination rests on the district and not the parties;
- provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible;
- review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance; and

- provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible. Such evidence will be accessible to the parties as follows:
  - An accurate description of relevant and not impermissible evidence will be sent to the parties through an investigation report compiled by the investigator within 30 days of investigator's receipt of the complaint.
  - if the investigation report merely describes relevant and not impermissible evidence, the parties will be entitled to an equal opportunity to access the relevant and not impermissible evidence by request of any party.

The decisionmaker shall do the following:

- Reserve the opportunity to question the parties and witnesses to adequately assess an individual's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination;
- ensure that, once the investigation report is received by the parties, the parties shall have up to 10 days to provide the decisionmaker with a written response to the evidence or description thereof prior to the decisionmaker issuing a determination; and
- issue a determination regarding whether sex discrimination occurred within 10 days after the decisionmaker has completed any additional investigation, evaluated the evidence, and given the parties an opportunity to provide a written response thereto. Such determination shall do the following.
  - It will use the preponderance of the evidence standard of proof to determine whether sex discrimination transpired after the decisionmaker has evaluated relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker does not find that the preponderance of the evidence supports a conclusion that sex discrimination has occurred, the decisionmaker must determine that sex discrimination did not occur.
  - It will provide the parties with written notice of the determination whether sex discrimination occurred under Title IX or its regulations, including the rationale for such determination, and of the procedures and permissible bases for the complainant and respondent to appeal, if applicable.

- If it is determined that sex discrimination has occurred, it will require the Title IX Coordinator to coordinate the provision and implementation of remedies to a complainant and other persons identified as having had equal access to the district's education program or activity limited or denied by sex discrimination; coordinate the imposition of any disciplinary sanctions on a respondent; and take other appropriate, prompt, and effective steps to ensure that sex discrimination does not continue or recur within the district's program or activity.
- It will not support the imposition of disciplinary sanctions against a respondent until the grievance or informal resolution processes have been completed, except as authorized by law regarding supportive measures, emergency removals, and administrative leaves.
- It will not discipline a party, witness, or other participant in this grievance process for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

A copy of the written determination shall be sent to all parties simultaneously.

The range of disciplinary sanctions and remedies may include, but may not be limited to, supportive measures, short-term suspension, long-term suspension, and expulsion for students, and/or paid suspension, unpaid suspension, nonrenewal, or termination for employees. If the determination results in a recommendation that a student be suspended or expelled, procedures outlined in board policy and state and federal law governing student suspension and expulsion will be followed.

If the determination results in a recommendation that an employee be suspended with or without pay, nonrenewed, or terminated, procedures outlined in board policy, the negotiated agreement (as applicable), and state law will be followed.

Records relating to complaints filed, the informal resolution or grievance procedures, and their resolution shall be maintained by the Title IX Coordinator for at least seven years.

The determination becomes final on the date the parties receive the results of an appeal, if any appeal is filed; or on the date any opportunity for an appeal expires.

#### Appeal Process

A request for an appeal from a determination whether sex discrimination occurred must be received by the Title IX Coordinator within 10 days of the determination being sent by the decisionmaker.

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Within 10 days of receiving the request for an appeal, the Title IX Coordinator shall appoint an appeal hearing officer who did not take part in any investigation or determination of the allegations, and

notify the parties of the appeal, including notice of the allegations consistent with the notice provided in the grievance procedure if notice was not previously provided to the respondent.

Appeals shall be a review of the record by an appeal hearing officer who is an attorney, an independent hearing officer appointed by the board, or the board. The appeal hearing officer may not be the Title IX Coordinator, the investigator, or the decisionmaker from the original determination.

The appeal hearing officer shall:

- Review the relevant and otherwise not impermissible evidence or a description thereof, the investigation report, and the original decisionmaker's determination;
- will provide the parties with the opportunity to provide a written statement in support of or challenging the outcome;
- not have a conflict of interest or bias for or against any party;
- have received training regarding Title IX and its regulations;
- describe the result of the appeal and the rationale for the result in the appeal hearing officer's decision within 30 days of the appeal being filed; and
- provide the written decision simultaneously to the parties and to the Title IX Coordinator.

#### District Response to Determination of Sex Discrimination

Use of this complaint procedure is not a prerequisite to the pursuit of any other remedies, including the right to file a complaint with the Office for Civil Rights of the U.S. Department of Education, the Equal Employment Opportunity Commission, or the Kansas Human Rights Commission.

The filing of a complaint or otherwise reporting sex discrimination, including sex-based harassment shall not reflect upon the individual's status or grades. Any act of retaliation or discrimination against any person who has filed a complaint or testified, assisted, or participated in any investigation, proceeding, or hearing involving sex discrimination, including sex-based harassment, is prohibited. Any person who retaliates is subject to immediate disciplinary action, up to and including expulsion for a student or termination of employment for an employee.

If discrimination or harassment has occurred, the district will take prompt, remedial action to stop it and prevent its recurrence.

Except as otherwise provided herein, false or malicious complaints of sexual discrimination may result in disciplinary action against the complainant.

Approved: 11/7/2024