

POLICY SERVICES ADVISORY

Volume 23, Number 2

July 2024

POLICY ALERT

To: Superintendents and Board Members

Date: July 12, 2024

From: R. Daniel Castille, Policy Service Director

Re: Title IX litigation and policies

As many of you know, the U.S. Department of Education (USED) issued its Final Rule for changes to the Title IX regulations to go into effect August 1, 2024. Title IX is the law that prohibits sex discrimination in educational programs which receive federal financial assistance (all public school districts). The Final Rule would replace the existing Title IX regulations USED made in 2020 and would require changes to relevant Policy Service policies. Primarily due to the changes related to gender identity, the Final Rule has resulted in much litigation nationally seeking injunctions to halt enforcement. Approximately one-half of the states have combined to file six lawsuits in various federal district courts. New Mexico is not one of the states who has sued USED related to the Final Rule. Thus far, three of these federal courts (located in Kentucky, Louisiana, and Kansas) have issued preliminary injunctions which prohibit the Final Rule from going into effect in the 14 states that are plaintiffs in those three cases. Each of these cases prohibits the entirety of the Final Rule from going into effect, and not just those provisions related to gender identity. Despite being asked to, none of the three federal courts has issued a nationwide injunction to prohibit the Final Rule from taking effect in all 50 states.

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However, in the Kansas case, which was the one most recently decided on July 2, the plaintiffs were not only four states (Kansas, Wyoming, Utah, and Alaska) but also the national organizations Young America's Foundation, Female Athletes United, and Moms for Liberty, which sued on behalf of their members. The Kansas federal district court's injunction prohibits USED from implementing, enacting, or enforcing the Final Rule in those four states plus at any schools attended by the members of Young America's Foundation or Female Athletes United, and schools attended by the children of the members of Moms for Liberty, regardless of the state in which those members live. The Kansas court has required those national organizations to file a list of those schools at which their members attend by July 15 and the injunction will presumably impact those schools on the list. Board members and Superintendents should know that the injunction does not prohibit school districts or schools from doing anything, but if USED may only "implement" or "enact" the Final Rule at certain schools and not others, that presumably means that the old Title IX regulation applies at some schools and the Final Rule applies at others (which could mean different rules at schools within the same district).

This creates an obvious policy problem for school districts. The issues will need to be resolved by further litigation or by USED delaying the effective date of the Final Rule. USED has appealed the injunction order in the Kentucky and Louisiana cases and will presumably appeal the Kansas case. The Kansas case would be appealed to the 10th Circuit Court of Appeals which jurisdiction includes New Mexico. We still do not know the impact of future decisions in the three other federal court cases with states as plaintiffs that have yet to be decided, and we do not know if or when the Supreme Court will get involved.

Policy Service had been on the verge of issuing Policy Advisories related to Title IX before we learned about the Kansas case. The advisories that would have issued are included with this Alert for information purposes only. When Policy Service issues a Policy Advisory, it changes the master policies. Policy Service has determined not to change its master policies at this time until we have a better understanding of the fate of the Final Rule. Very little of the changes that would have been proposed in the advisories dealt with the controversial part of the Final Rule; almost all

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of it related instead to the process for resolving complaints of sex discrimination (including sexual harassment) in schools. The Final Rule would allow substantially simplified processes for handling such complaints that allowed more flexibility for K-12 schools. Unfortunately, since the Kansas case injunction prohibits the entirety of the Final Rule in those schools at which it applies, there is uncertainty about whether schools have the benefit of using those simplified processes. Districts should consult their attorneys about how best to navigate these issues and subscribing districts may use the policies that would have been proposed in the advisories if they wish, subject to the understanding that the Policy Service does not warrant their legal compliance. Please note that some of the policies that would have been amended by these advisories are not directly related to Title IX and could be implemented now. However, due to the interrelationship between all of the policies, Policy Service has determined to hold off on making those changes official at this time as well.

Finally, it should be noted that New Mexico already has laws prohibiting discrimination based on gender identity in public schools and none of state laws will be impacted by the pending legislation related to the Title IX Final Rule. Policy Service will continue to monitor the Final Rule litigation and will provide updates or policy advisories when appropriate.

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Policy Advisory Discussion

These policy advisories are prompted primarily by changes to the regulations implementing Title IX of the Educational Amendments of 1972, which prohibits sex discrimination in education programs and activities that receive federal financial assistance (i.e., every public school district). Like the existing regulations, the new regulations are published in part 106 of title 34 of the Code of Federal Regulations (34 CFR 106). Other changes are to make overdue amendments to policies to comply with changes to the New Mexico Human Rights Act or to make other related improvements thought necessary by Policy Services.

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Title IX

On April 19, 2024, the U.S. Department of Education adopted new Title IX regulations which largely replace those adopted in 2020. The new regulations, which follow approximately 1700 pages of administrative guidance, will take effect on August 1, 2024¹. Broadly speaking, the new regulations:

- Focus more on sex discrimination generally, rather than just sexual harassment (now called sex-based harassment).
- Make clear that sex discrimination includes discrimination based on sexual orientation, gender identity, sex characteristics, sex stereotypes, and pregnancy and related conditions.
- Broaden the definition of sex-based harassment to include conduct that is “severe or pervasive,” and not just conduct that is both severe and pervasive.
- Allow for a simpler and more flexible grievance process for handling sex discrimination complaints in K-12 schools.
- Allow a single investigator model in which the Title IX coordinator (or any properly trained person) may be the investigator and a decision-maker for the same complaint.
- Allow for an informal resolution process even in the absence of a formal complaint.
- Provide specific protections related to pregnancy and related conditions.
- Require the Title IX Coordinator to consult with students’ special education teams if applicable.
- State that in most instances in which schools are allowed to provide different programs or services segregated by sex, participants must be allowed to participate in accordance with their gender identity (The regulation does not address athletics).

¹ At least 26 states have filed suits seeking an injunction to prevent the new regulation from going into effect. New Mexico is not one of them. This policy advisory is made on the assumption that the new regulation will go into effect for all New Mexico school districts on August 1, 2024.

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The new Title IX regulation (at § 106.8) requires districts to adopt, publish and implement 1) a nondiscrimination policy stating that the district does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, including in admission and employment, and 2) grievance procedures consistent with Title IX rules that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in the recipient's education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX.

The regulations do not require that the policy contain anything other than a statement that the district does not discriminate based on sex and a prohibition on sex discrimination. However, because the regulation places a host of specific obligations on districts, it is the judgment of Policy Services that the policy should include most of those regulatory requirements as a guide to Title IX coordinators and other participants and stakeholders. The policy, at ACA, is therefore long, like the policy it replaces. The new ACA does not, however, attempt to address every single regulatory requirement or to answer every potential Title IX issue. For example, the new policies and regulations do not address the Title IX regulatory requirement that a person generally be allowed to participate in programs or activities consistent with their gender identity, which is the source most of the controversy and litigation surrounding the new regulations nationally. Courts in our jurisdiction have not addressed whether Title IX or other federal laws require participation in accordance with gender identity but Districts should be aware that it is the policy of the U.S. Department of Education, as expressed in these Title IX regulations which typically have the force of law, that people generally be allowed to participate in district programs, facilities, and activities consistent with their gender identity, subject to certain exceptions. [Note that, even in the absence of Title IX, the New Mexico Human Rights Act provides similar prohibitions and protections for transgender people so, for New Mexico school districts, the new Title IX regulations are not a radical departure from existing legal requirements related to gender identity.]

The required written grievance procedure for addressing complaints of sex discrimination is set out in ACA-R. It replaces existing ACA-RA and existing ACA-RB is deleted. Like the old regulation, the new Title IX regulation prohibits punishing, disciplining, or sanctioning a person alleged to have violated the prohibition on sex discrimination (i.e., a respondent) unless and until the respondent has been found to have discriminated following the required grievance process (or unless agreed to in a voluntary information resolution process). The new regulations continue to allow a Title IX decision-maker to impose disciplinary sanctions following the grievance process. Left unresolved by the new regulations is whether Title IX preempts existing state law due process; i.e., whether the Title IX decision-maker or appellate decision-maker is the final word on disciplinary sanctions in all cases or whether districts still have to comply with state law requirements before long-term

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suspending or expelling a student or terminating/discharging a tenured or contracted employee. Though disagreement among lawyers exists, it is the position of Policy Services that the Title IX regulations are not intended to preempt state law due process and that if a Title IX coordinator imposes the disciplinary sanctions of long-term suspension/expulsion or termination/discharge, the District still must offer the state law procedures before those sanctions may go into effect. That conclusion is written into the new proposed procedure.

The regulations also require Districts to provide notice of nondiscrimination, containing specific elements, to students, parents, employees, applicants, unions and essentially every district stakeholder. A form notice of nondiscrimination is provided with these policy advisories as a new ACA-EB.

Note regarding policy philosophy: The Title IX regulations require very specific procedures for handling sex discrimination complaints that are not legally required for handling other types of discrimination complaints. The existing master policies contain different procedures for handling non-sex-based discrimination complaints than those required for Title IX sex discrimination complaints. A policy writer could choose, for the sake of consistency, to handle all discrimination complaints in the same manner as Title IX complaints and thus reduce the need for different policies for different types of discrimination. However, because the Title IX procedures require such prescriptive procedures related to sex discrimination, including before any disciplinary sanctions that can be imposed, and so many ways exist in which a district could potentially go wrong, it is the judgment of the Policy Service to maintain different procedures for handling complaints of sex discrimination and other forms of discrimination. It appears this is also the policy choice made by a majority of policy writers in other state associations.

The New Mexico Human Rights Act (“NMHRA”), N. M. S. A. 1978, § 28-1-1 *et seq.*

The NMHRA is New Mexico’s primary nondiscrimination law. It has always prohibited discrimination based on numerous protected characteristics² in employment/labor, public accommodations, and housing. Because school districts generally do not provide housing and have not historically been considered public accommodations (like restaurants, movie theaters, retail stores, hotels, etc.), the NMHRA mostly only applied to employment in the public school context. That changed in 2023 when amendments to the NMHRA made clear that school districts are public accommodations and also added a provision prohibiting discrimination by

² Race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, physical or mental disability, serious medical condition or military status, or, in some cases, spousal affiliation.

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governmental entities (which includes school districts). As a result, it now violates the NMHRA for a school district “to make a distinction, directly or indirectly, in offering or refusing to offer its services, facilities, accommodations or goods to any person,” or “to refuse or otherwise limit or put conditions on services” based on the protected characteristics, subject to certain exceptions.

As previously mentioned, in addition to the Title IX/sex discrimination policies, the NMSBA policy manual contains several other nondiscrimination/equal opportunity policies, procedures, and exhibits. The policy at A-0250 AC applies to “all matters concerning staff members, students, the public, educational programs and services, and individuals with whom the Board does business.” The policy at G-0200 (GBA) applies to employment. The policy at J-0150 (JB) applies to students. Of those three existing policies, only the one related to employment contained a complete listing of the protected characteristics for which the NMHRA bans discrimination. (The existing policies in Section A and Section J only prohibit discrimination based on race, color, religion, sex, sexual orientation, age, national origin, and disability). These policies should previously have been updated to reflect the changes made by the NMHRA and Policy Service takes this opportunity to correct those policies now.

Following the 2023 amendments to the NMHRA, the Policy Service added Policy A-0400 (ACBB) which essentially states that the NMHRA prohibits a school district from refusing or otherwise limiting or placing conditions “on services provided to a person because of gender or gender identity (among other listed conditions).” Policy Service now determines that there is not any reason to single out gender or gender identity discrimination in a separate policy and the better approach is to address the issue as set forth in the prior paragraph, through the modifications to the three general nondiscrimination policies. Policy ACBB is therefore deleted.

Another legislative enactment in 2023 was New Mexico’s Reproductive and Gender-Affirming Health Care Freedom Act at N. M. S. A. 1978, § 24-34-1 *et seq.* That act bars discrimination or interference by public bodies (including school districts) based on a person’s use of or refusal to use reproductive health care or gender-affirming health care services, as those terms are defined by the Act. The response of the Policy Service at the time was to create policy A-0350 (ACB) which was specific to the Act. While there is nothing inherently wrong with that approach, in the interest of streamlining and reducing the patchwork of various nondiscrimination policies, Policy Service now determines to instead include gender-affirming health care and reproductive health care among the protected characteristics included in the three nondiscrimination policies, rather than maintaining a stand-alone policy. Policy ACB is therefore deleted.

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Changes to non-sex-based discrimination procedures and reporting forms.

Each of the three general nondiscrimination/equal opportunity policies (A-0250 [AC], G-0200 [GBA], J-0150 [JB]) contain their own patchwork of procedures for resolving (non-sex based) discrimination complaints and reporting forms which is a source of confusion for school employees trying to implement those procedures. Because those policies needed to be changed anyway, the Policy Service determined it was a good opportunity to streamline, combine, and otherwise hopefully improve those procedures and reduce confusion. As a result, the Policy Service is deleting G-0211 (GBA-R), G-0231 (GBA-E), J-0161 (JB-R), and J-0181 (JB-E) and referring all non-sex-based discrimination complaints to the procedure and reporting form at A-0261 (AC-R) and A-0281 (AC-E), respectively.

Another purpose of the change made to the complaint procedure at A-0261 AC-R is to make the appeal process for non-sex-based discrimination complaints consistent with the Title IX appeals process. The new Title IX regulations do not actually require K-12 schools to have an appeal for a determination that sex discrimination occurred, and the resulting sanctions imposed. However, the Title IX regulations do state that if districts do offer an appeal in proceedings related to other discrimination complaints, it has to offer a comparable Title IX appeal. As A-0261 AC-R exists now, it allows an unlimited appeal regarding non-sex-based discrimination to the Superintendent and potentially to the Board. Rather than requiring the expansive appeal process in Title IX consistent with existing A-0261 AC-R, policy service opted to provide a more limited Title IX appeal and to change the appeal process for non-sex based discrimination complaints accordingly.

Note to School Districts

Not every school board has adopted the NMSBA policy service policies wholesale or verbatim. Some have chosen not to adopt certain policies and have modified others. The changes set out in these policy services are changes to the NMSBA master policies. As with all new master policies, districts considering adopting them should consider their impact on other existing policies.

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POLICY ADVISORIES

Policy Advisory No. 246 – AC (A-0250) Nondiscrimination/Equal Opportunity. As mentioned in this discussion, this policy is the general non-discrimination policy that applies to staff members, students, the public, educational programs and services, and individuals with whom the Board does business. It is amended to include all of the protected characteristics for which the NMHRA prohibits discrimination. It is also amended to make clear that more specific nondiscrimination policies included elsewhere apply to employees and students and to make clear that sex discrimination complaints are handled differently, in accordance with Title IX. **Regulation AC-R (A-0261) – Nondiscrimination/Equal Opportunity.** This is the procedure for handling non-sex based complaints of discrimination and, going forward, it is intended to be the procedure for handling all such complaints, including those related to students and employees. Separate but similar existing procedures relating to employees (in Section G) and students (in Section J) will be deleted. This procedure is also amended to attempt to reduce confusion about who investigates such complaints and to allow flexibility in different situations about who investigates and how such investigation is conducted. As mentioned in the Discussion, the appeal process is also changed to remove the possibility of an appeal to the school Board and to make the appeal process consistent with Title IX appeals.

Policy Advisory No. 247 – ACA (A-0300) Nondiscrimination on the Basis of Sex. This is the new Title IX policy and it is intended to replace the existing (ACA) Title IX policy in its entirety. It contains the required statement that the district does not discriminate on the basis of sex and prohibits sex discrimination in its education programs and activities. It contains the district’s requirement to provide notice of nondiscrimination to all district stakeholders.

The policy contains the requirement that all employees, contractors and school volunteers notify the Title IX coordinator when they have information about conduct that may reasonably constitute sex discrimination (§ 106.44(c)). It states that the Superintendent may, but is not required to, designate certain employees as “confidential employees” who are not required to notify *the Title IX coordinator* (though they still have all of the other mandatory reporting requirements imposed by other laws). Title IX allows for confidential employees to provide a means for students or others to talk to someone about sex discrimination or harassment—like a school psychologist—without triggering the involvement of the Title IX coordinator and resulting processes. Policy Service assumes that different districts will take a different position on whether to designate confidential employees who do not have to notify the Title IX coordinator and the decision may be based on the employee resources in each district. The policy allows the superintendent to make the decision whether to designate any confidential employees. If confidential employees are

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designated, the District is required, by § 106.44(d), to give notice regarding how to contact confidential employees. The notice of nondiscrimination (a new form at ACA-EB, addressed below) is intended to be the mechanism by which the Superintendent may provide notice of any designated confidential employees.

The policy also requires the district to adopt the complaint grievance procedures required by Title IX, to designate one or more Title IX coordinators (with one individual ultimately responsible for district compliance), and spells out the Title IX Coordinator duties for Title IX compliance. The policy contains a section on supportive measures that the Title IX coordinator and district may have to offer complainants or respondents when notified of conduct that may reasonably constitute sex discrimination, regardless of whether a complaint is filed. It also contains a section describing when and how an informal resolution may be used in lieu of going through the complaint grievance process, regardless of whether a complaint is filed.

The policy contains lengthy sections on the Title IX requirements related to student and employee pregnancy (and related conditions) and marital status including specific actions to prevent discrimination and required modifications to existing policies and practices to ensure equal access to the District's education program and activities.

The policy provides a prohibition on retaliation against any person for the purpose of interfering with Title IX rights or because a person has, in any manner, participated in any part of the Title IX process.

The policy contains a section on Training requirements for 1) all employees and 2) those with more specific Title IX roles. Title IX requires that all employees must be trained on the District's obligation to address sex discrimination, the types of conduct that constitute sex discrimination and sex-based harassment, and their notification/reporting requirements when they have information about conduct that may reasonably constitute sex discrimination. More advanced training is required for Title IX investigators, decision-makers (including decision-makers on appeal), others involved in implementing the grievance procedures, those authorized to modify or terminate supportive measures, those who facilitate an informal resolution process, and Title IX coordinators.

The policy also contains sections addressing the prohibited disclosure of personally identifiable information, recordkeeping requirements, and Title IX definitions. The Title IX words defined include complainant, complaint, confidential employee, disciplinary sanctions, parental status, party, peer retaliation, pregnancy or related conditions, program or activity, remedies, respondent, retaliation, sex-based harassment, and supportive measures.

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As mentioned in the discussion, the policy does not attempt to address the situations in which Title IX requires the treatment of individuals in accordance with their gender identity, which appears to be the most controversial and litigated aspect of the new Title IX regulations. Districts who wish to add such a provision may contact the Policy Service or their attorney. **Regulation ACA-RA (A-0311) – Nondiscrimination on the Basis of Sex.** This is the complaint/grievance procedure, required by § 106.45 for K-12 schools, for resolving complaints of sex discrimination, including but not limited to sex-based harassment. When the Department of Education published the new Title IX regulations, it also published a guidance for writing a grievance procedure and this procedure is largely taken from that guidance. Even though this procedure is designated as a “regulation” instead of a “policy,” as those terms are used in the Policy Service manual, the procedure states that it is the functional equivalent of a policy, which requires Board approval to change, since it sets forth legal requirements. The procedure is intended to be read by the Title IX coordinator in conjunction with Policy ACA when dealing with sex discrimination complaints. The procedure is only applicable to “complaints,” as defined in Title IX.

The procedure addresses the process for making complaints and who may make them, including differences depending on whether the complaint alleges sex-based harassment or non-harassment related sex discrimination. According to the regulations, complaints may be either oral or written.

It addresses the requirements for the District to provide notice of allegations made in a complaint and the circumstance and manner in which complaints may be dismissed and dismissals appealed. The procedure includes sections on informal resolution and supportive measures that are intended to be read in conjunction with those requirements in Policy ACA.

The longest section of the procedure is the Basic Requirements of the Title IX Grievance Procedures which sets out the basic Title IX rules for the grievance process. Among other things, that section, in accordance with Title IX, requires districts to “establish reasonably prompt timeframes for the major stages of the grievance procedures.” That involves fixing the number of days by which the major stages should be complete. ***Because Districts have differing resources to devote, Policy Service has left those timeframes blank, and Districts need to determine the timeframes by which those “major stages” should be complete, and fill in the blanks accordingly in their policy adoption process.*** The Title IX regulations allow for the reasonable extension of the timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay.

The procedure includes other sections on requirements for how the investigation is handled and how the decision-maker may ask permissible questions of the parties prior to making a decision.

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The regulations require the policy to include a list, or a description of the range of disciplinary sanctions that may be imposed following a determination that sex-based harassment occurred. Policy Service has provided a section of potential disciplinary sanctions that may be imposed following any determination that a respondent has engaged in any prohibited sex discrimination. For students, the range is described by reference to existing Policy Service policies that deal with student discipline. For employees, the range is described by reference to existing Policy Service policies that deal with employee discipline. As mentioned in the discussion, some ambiguity exists regarding whether Title IX preempts state law due process and reasonable lawyers disagree. Policy Service has determined that Title IX most likely does not preempt state law due process and that, following a decision by a Title IX decision-maker that a respondent committed sex discrimination and ought to be long-term suspended/expelled or terminated/discharged (and any appeals), the District will initiate those state law processes to long-term suspend/expel a student (NMAC 6.11.2.11 and 12) or, if applicable, to terminate/discharge an employee (NMSA 22-10A-24 and 27). If Districts have concerns about that, they should consult their attorney prior to adoption of this procedure as written.

The grievance procedure concludes with a section describing the process by which any party may appeal a determination whether sex discrimination occurred and any resulting disciplinary sanction. As mentioned in the Discussion, Title IX does not require any particular appeal process but does require the District to provide at least an equivalent process to appeal as it does in its comparable proceedings, including other discrimination proceedings. The procedure provided herein contains a limited basis to appeal, limited to whether there was a procedural irregularity that would change the outcome, new evidence that would change the outcome, or bias. Districts that wish to modify the appeals process may consult with their attorneys. **Exhibit ACA-EA (A-0331) – Nondiscrimination on the Basis of Sex.** This form is identical to the existing form for making a complaint under Title IX with the exception of the introductory note which states that the form is not required to make a complaint. A “complaint” under Title IX is “an oral or written request to the [district] that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX.” Since a complaint may be oral or written, the introductory note is included as a reminder to a Title IX coordinator to not insist on a written complaint before initiating the grievance procedures. **NEW Exhibit ACA-EB (A-0332) – Nondiscrimination on the Basis of Sex (Notice of Nondiscrimination).** This is a newly created form. As mentioned in the Discussion, § 106.8 requires a district to provide notice of nondiscrimination to students; parents, guardians and other authorized legal representatives of students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the District, and to prominently include the notice on the District’s website and in each handbook, catalog, announcement,

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bulletin, and application for that the District makes available to people entitled to notice, or which are otherwise used in connection with the recruitment of students or employees.

The notice must include a statement of non-discrimination and prohibition on sex discrimination, a statement directing inquiries about Title IX to the Title IX coordinator or the Office for Civil Rights (OCR), a statement about how to locate the district's Title IX policy and grievance procedure, and a statement about how to report conduct that may constitute sex discrimination. Exhibit ACA-EB is intended to satisfy the requirements for the Notice of Nondiscrimination, assuming the District publishes it in all required ways. ***The District will need to fill in the blanks on the Exhibit prior to submission for publication in the policy portal.***

As mentioned in the Discussion, the District is required to notify all participants in its education program or activity of how to contact its confidential employees, if any (§ 106.44(d)). The natural place to do that is in the notice of nondiscrimination. ***Therefore, if the Superintendent designates confidential employees, it may be done by including the green highlighted language and listing contact information. For Districts that do not designate confidential employees, they should delete that green highlighted language.***

Because this is an Exhibit in the policy manual, a Superintendent may replace it without prior board approval which should ease the process in the event of changes to the Title IX coordinator, the online location of Title IX policies, or the designation of confidential employees, if any. The District will still have to replace its existing notice with any new notice in all of the places it publishes the notice of nondiscrimination.

Policy Advisory 248 – ACB (A-0350) (DELETED) Nondiscrimination Related to Reproductive or Gender Affirming Health Care. For the reasons described in the Discussion, this policy is deleted from the Policy Service master policies.

Policy Advisory 249 – ACBB (A-0400) (DELETED) Human Rights Act Protection Gender Or Gender Identity. For the reasons described in the Discussion, this policy is deleted from the Policy Service master policies.

Policy Advisory 250 - GBA (G-0200) Equal Employment Opportunity. This is the nondiscrimination/equal opportunity policy applicable to employment. The existing policy, which this amends, contained in the first two sentences separate lists of protected characteristics for which discrimination is prohibited. This problem is remedied in the new GBA, mostly by deleting the first sentence of the policy. As mentioned in the discussion, amendments are also made to make clear that 1) different policy and procedures apply to Title IX sex discrimination complaints and 2) non-sex-based employment discrimination complaints are to be made via the same

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process as other non-sex based discrimination complaints (i.e., via Policy AC and Regulation AC-R). **GBA-R (G-0211) –Equal Employment Opportunity Regulation (DELETED)**. For the reasons described in the Discussion, this regulation is deleted from the Policy Service master manual. **GBA-E (G-0211) – Equal Employment Opportunity Exhibit (DELETED)**. For the reasons described in the Discussion, this complaint form is deleted from the Policy Service master manual.

Policy Advisory 251 – IHBCA (I-2550) Notification of Board Meetings. This policy is amended solely to add 34 CFR 106 (Title IX regulations) to the Legal Reference section and Policy ACA to the Cross-Referenced policies section.

Policy Advisory 252 - JB (J-0150) Equal Educational Opportunities. As discussed in the discussion, this policy is amended to expand the list of prohibited bases of discrimination to comply with the NMHRA. Amendments are also made to make clear that 1) different policy and procedures apply to Title IX sex discrimination complaints and 2) non-sex-based employment discrimination complaints are to be made via the same process as other non-sex based discrimination complaints (i.e., via Policy AC and AC-R). **JB-R (J-0161) –Equal Employment Opportunity Regulation (DELETED)**. For the reasons described in the Discussion, this regulation is deleted from the Policy Service master manual. **JB-E (J-0181) –Equal Employment Opportunity Exhibit (DELETED)**. For the reasons described in the Discussion, this complaint form is deleted from the Policy Service master manual.

Policy Advisory 253 – JIE (J-3200) Pregnant/Parenting Student. This policy is amended solely to add 34 CFR 106 (Title IX regulations) to the Legal Reference section and Policy ACA to the Cross-Referenced policies section.

Policy Advisory 254 - JIG (J-3350) Married Students. This policy is amended solely to add 34 CFR 106 (Title IX regulations) to the Legal Reference section and Policy ACA to the Cross-Referenced policies section.

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If you have any questions or requests call Policy Services at (505) 469-0193 or e-mail Dan Castille, Policy Services Director at rdcpolicyservices@outlook.com.

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ADVISORY 246

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NONDISCRIMINATION / EQUAL OPPORTUNITY

The Board is committed to a policy of nondiscrimination and equal opportunity in relation to race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, gender-affirming health care, pregnancy, childbirth or condition related to pregnancy or childbirth or reproductive health care, physical or mental disability or serious medical condition, or military status and spousal affiliation ~~race, color, religion, sex, sexual orientation, age, national origin, and disability~~. This policy will prevail in all matters concerning staff members, students, the public, educational programs and services, and individuals with whom the Board does business, but for policies and procedures more particularly applicable to employees or students see Policies GBA and JB, respectively. The Superintendent will appoint the compliance officers and/or Title IX Coordinators.

Nothing in this policy shall be construed to require the district to provide services or programs beyond services or programs to the specific populations that the district is tasked with serving.

All reports or ~~grievances~~ complaints regarding discrimination ~~in employment~~ other than those regarding discrimination on the basis of sex should be directed to the Superintendent's office of compliance. All complaints or reports of discrimination on the basis of sex (i.e., Title IX complaints) which includes sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, gender identity, and sex-based harassment, shall be directed to the Title IX Coordinator per Policy ACA.

Adopted: date of manual adoption

LEGAL REF.: 22-5-4.3 NMSA

22-31-1 NMSA *et seq.*, School Athletic Equity Act

24-34-1 NMSA *et seq.*

28-1-2 NMSA *et seq.*

20 U.S.C. 1092(f)(6)(A)(v), Sexual Assault

20 U.S.C. 1400 *et seq.*, Individuals with Disabilities

Education Act

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

20 U.S.C. 1703, Equal Employment Opportunity Act of 1972

29 U.S.C. 794, Rehabilitation Act of 1973, (Section 504)

34 U.S.C. 12291(a)(8), (10), (30) Domestic Violence, Dating

Violence, Stalking

42 U.S.C. 2000, Civil Rights Act of 1964, Titles VI and VII

42 U.S.C. 12101 *et seq.*, Americans with Disabilities Act

34 CFR Part 106, Nondiscrimination on the basis of Sex in

Education

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CROSS REF.: ACA - Nondiscrimination on the Basis of Sex
GBA - Equal Employment Opportunity
GCQF - Discipline, Suspension, Termination and Discharge
of Professional Staff Members
GDQD - Discipline, Suspension, Termination and Discharge
of Support Staff Members
IHBA - Special Instructional Programs and
Accommodations for Disabled Students
IHBCA - Programs for Pregnant/Parenting Students
JB - Equal Educational Opportunities
JIE - Pregnant/Parenting Student
JIG - Married Students
~~JII - Student Concerns, Complaints, and Grievances~~
JJIB - Interscholastic Sports
JK - Student Discipline
JKD - Student Suspension/Expulsion
KED - Public Concerns/Complaints about Facilities or
Services

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REGULATION**REGULATION****NONDISCRIMINATION / EQUAL OPPORTUNITY****Compliance Officer**

The Superintendent shall appoint the compliance officer. Any person who feels unlawfully discriminated against or to have been the victim of unlawful discrimination by an agent or employee of the District, or a student, or who knows of such discrimination against another person should file a complaint with the Superintendent's Office for referral to the compliance officer. If the Superintendent ~~or a compliance officer~~ is the one alleged to have unlawfully discriminated, the complaint shall be filed with the President of the Board. [Note: This regulation does not apply to discrimination on the basis of sex. All complaints or reports of discrimination on the basis of sex, which includes sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, gender identity, and sex-based harassment, shall be directed to the Title IX Coordinator per Policy ACA.]

Complaint Procedure

The District is committed to investigating each complaint and to taking appropriate action on all confirmed violations of the Nondiscrimination/Equal Opportunity policy. The compliance officer shall, if necessary, contact the complainant and gather information to complete the ~~grievance report~~ Nondiscrimination/Equal Opportunity Complaint Form at A-0281 AC-E. Following completion of the District-provided forms, the compliance officer shall cause the complaint to be have investigated, and documented grievances reported pursuant to this regulation as soon as reasonable. ~~In investigating the grievance, confidentiality will be maintained to the extent reasonably possible.~~ The compliance officer shall also have investigated ~~incidents~~ complaints of violations of the Nondiscrimination/Equal Opportunity policy violation that are raised by the Board, even though no ~~grievance~~ written complaint has been made. In investigating the complaint, confidentiality will be maintained to the extent reasonably possible.

The compliance officer may select any appropriate person to conduct the investigation into alleged discriminatory conduct and shall avoid conflicts of interest in the selection of an investigator. Any person designated by this regulation to select an investigator, to investigate, to make a determination, to apply remedial steps, to recommend discipline, to hear an appeal, or to take any other action may be changed to avoid conflicts of interest or for other good cause.

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If, after the initial investigation, there is reason to believe that a violation of policy has occurred, the compliance officer shall have remedial steps instituted and have the steps reported to the complainant to the extent permitted by applicable law. If responsibility is found, the compliance officer may determine whether or not to recommend institution of procedures in accord with due process, conduct and disciplinary policies.

If a teacher or an administrator is alleged to have violated policy, the due process provisions of the District's Policy GCQF shall apply. In cases of serious misconduct, dismissal or suspension proceedings in accordance with policy may be initiated.

If a support staff employee is alleged to have violated policy, the compliance officer may refer the matter for the purpose of due process and discipline under Policy GDQD if the evidence so warrants.

If the person alleged to have violated policy is a student, discipline may be imposed in accordance with Policies JK and JKD.

If the investigation reveals no reasonable cause to believe policy has been violated, the compliance officer or investigator shall have the complaining party informed in writing.

Timelines

The ~~grievance~~ Nondiscrimination/Equal Opportunity Complaint Form must be filed within thirty (30) calendar days after the complaining party knew or should have known that there were grounds for a complaint/~~grievance~~.

Once the ~~grievance report complaint form~~ has been filed ~~or reported and the forms provided by the District filled in, so far as is possible~~ submitted, the compliance officer shall require the immediate supervisor or site administrator, or other appropriate investigator, to investigate and respond in writing to the complaining party within ten (10) working days.

The determination and disciplinary sanction imposed by the investigator or any other person may be appealed to the Superintendent by the complainant or the respondent, by providing written notice of appeal to the Superintendent within five business days of receipt of the determination, on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the determination was made; and

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- The investigator or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

~~If the complainant is not satisfied with the actions taken by the administration as indicated in the response and efforts to alleviate the discrimination alleged, the complainant will have ten (10) days within which to submit a written objection, including a statement of the reason for their objection, to the Superintendent.~~

The Superintendent will have ten (10) ~~additional working~~ business days to respond in writing to the complaining party regarding the ~~objection~~ appeal. The decision of the Superintendent shall be final subject to any additional due process required by applicable law or District policy.

The timelines set forth herein may be enlarged if good cause exists for longer or different timelines.

~~If the Superintendent does not respond within the established time, then the complaining party may request in writing that the issue be brought before the Board. The Board will then review the record of the investigation and have thirty (30) days to respond to the complaining party in writing.~~

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ADVISORY 247

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NONDISCRIMINATION ON THE BASIS OF SEX

~~The following is to comply with Title IX regulations found in 34 CFR Part 106 as revised in April of 2020 which is said to be designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving federal financial assistance. An "education program or activity" includes locations, events, or circumstances over which the District exercised substantial control over both the respondent and the context in which the sexual harassment occurs.~~

~~The District shall notify applicants for employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the District (persons entitled to notification), of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator.~~

Name: _____
 Title: _____ Title IX Coordinator
 Address: _____

 Phone: _____
 E-mail: _____

~~Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or 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 (such as reporting to any District employee). Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.~~

~~Any employee of the District is required to inform the Title IX Coordinator, Superintendent or the Supervising Administrator of their work site of any report made to them or any instance they observed regarding sexual discrimination or sexual harassment as soon as possible. Failure to do so may result in their being subject to disciplinary action.~~

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~~**Policy on Nondiscrimination on the Basis of Sex.** This School District does not discriminate on the basis of sex in the education programs or activities that it operates, and per Title IX and 34 CFR Part 106 will not discriminate in such a manner. The requirement not to discriminate in the education programs or activities extends to employment. Inquiries about the application of Title IX and 34 CFR Part 106 may be referred to the District's Title IX Coordinator, to the Assistant Secretary of the Office for Civil Rights, Department of Education, or both.~~

~~**Publications.** The District will prominently display the contact information required for the Title IX Coordinator and the policy found herein on its website and in each handbook or catalog that it makes available to persons entitled to notification. The District will not use or distribute a publication stating that the recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by Title IX or 34 CFR Part 106.~~

~~**Grievance procedure and process adoption.** The District shall adopt, publish and provide notice of grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by 34 CFR Part 106 and a grievance process that complies with § 106.45 for a report of sex discrimination or a formal complaint. As defined in §106.30(a), a "Formal complaint" means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment." At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the District in which a formal complaint is filed.~~

~~The District must provide to persons entitled to a notification, notice of the grievance procedures and grievance process, including:~~

- ~~• how to report or file a grievance of sex discrimination,~~
- ~~• how to report or file a formal complaint of sexual harassment, and~~
- ~~• how recipient will respond.~~

~~For purposes of this policy and by citation, the definitions in 34 CFR 106.30(a), are adopted (see citations below under LEGAL REF.) For purposes of this policy and in accord with the definitions in 106.30(a), "sexual harassment" means conduct on the basis of sex that satisfies one (1) or more of the following:~~

- ~~(1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;~~

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- ~~(2) Unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient'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)."~~

~~Upon receiving a report regarding sex discrimination or sexual harassment with or without a formal complaint, the Title IX Coordinator shall provide a response to complainant and respondent of non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge which provide supportive measures and which shall include, discussion of supportive measures and informing them of what is available without a formal complaint. The Title IX Coordinator is responsible for the implementation of supportive measures.~~

~~Upon the making of a report regarding sex discrimination or sexual harassment the Title IX Coordinator shall promptly contact the complainant to:~~

- ~~• discuss the availability of supportive measures as defined in § 106.30,~~
- ~~• consider the complainant's wishes with respect to supportive measures~~
- ~~• inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and~~
- ~~• explain to the complainant the process for filing a formal complaint.~~

~~Supportive measures as indicated above may include:~~

- ~~• counseling,~~
- ~~• extensions of deadlines or other course-related adjustments,~~
- ~~• modifications of work or class schedules,~~
- ~~• campus escort services,~~
- ~~• mutual restrictions on contact between the parties,~~
- ~~• changes in work or housing locations,~~
- ~~• leaves of absence,~~
- ~~• increased security and monitoring of certain areas of the campus, and~~

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- ~~• administrative leave while a grievance is pending,~~
- ~~• emergency removal (following an individualized safety and risk analysis), and~~
- ~~• other similar measures.~~

~~In responding to a report or formal complaint the District must treat complainant and respondent equitably by offering both supportive measures.~~

~~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 to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.~~

~~**Retaliation prohibition.** No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or § 106, or because the individual has made a report or grievance, testified, assisted, or participated in or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or grievance of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.~~

~~**Corrective measures.** A finding of responsibility will be a determination that the District or a person in the District has violated policy and actions to correct the discriminatory practice or change the behavior of those involved will be instituted. Remedies designed to restore or preserve equal access to the District's education program or activity will be provided by the District, if appropriate.~~

~~A substantiated report of sex discrimination or formal complaint finding responsibility against a staff member in the District shall subject such staff member to disciplinary action in accord with GCQF Discipline, Suspension, Termination and Discharge of Professional Staff Members or GDQD Discipline, Suspension, Termination and Discharge of Support Staff Members.~~

~~A substantiated report of sex discrimination or formal complaint finding responsibility against a student in the District shall subject that student to disciplinary action, which may include the permissible penalties of JK Student Discipline and/or JKD Student Suspension/Expulsion.~~

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Statement of Policy

The District does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX, including in admissions and employment. Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, and includes sex-based harassment. The District also prohibits retaliation against those who oppose or report discrimination or harassment, or who participate in the District's investigation and handling of such reports

Notice of Nondiscrimination.

Notice of nondiscrimination shall be provided to students; parents, guardians and other authorized legal representatives of students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the District. The notice of nondiscrimination shall be prominently included on the District's website and in each handbook, catalog, announcement, bulletin, and application for that the District makes available to people entitled to notice, or which are otherwise used in connection with the recruitment of students or employees.

The District shall not use or distribute a publication stating that the district treats applicants, students, or employees differently on the basis of sex, except as such treatment is permitted by Title IX or this policy.

Reporting/Notification Requirements.

Every school employee, contractor or contractor's employee, and school volunteer (as those terms are defined in the School Personnel Act), with the exception of confidential employees, if any, are required to notify the Title IX Coordinator when they have information about conduct that may constitute sex discrimination under Title IX or this policy. The notification requirement does not apply to an employee who has personally been subject to conduct that reasonably may constitute sex discrimination under Title IX or this policy.

The Superintendent will determine whether to designate any employees as confidential employees. Nothing in this policy shall relieve any confidential employee of a duty to report mandated by state or federal law. The District will notify all participants in its educational program or activity about how to contact its confidential employees, if any. Any person designated a confidential employee shall comply with all requirements of Title IX applicable to confidential employees.

Nothing in this policy modifies, or relieves any employee of the obligation to comply with, any other mandatory reporting policy or law.

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Grievance Procedures

The District shall adopt, publish, and implement grievance procedures consistent with the requirements of Title IX that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in the District's education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or this policy.

No disciplinary sanctions for conduct that would constitute sex discrimination under Title IX will be imposed prior to a determination that sex discrimination occurred in a grievance procedure that complies with Title IX and this policy, unless agreed to pursuant to the informal resolution process.

Designation and Duties of Title IX Coordinator

The Superintendent shall designate and authorize at least one (1) employee, referred to as a Title IX Coordinator, to coordinate the District's efforts to comply with its responsibilities under Title IX. If the District has more than one (1) Title IX Coordinator, the Superintendent shall designate one (1) of its Title IX Coordinators to retain ultimate oversight over those responsibilities and ensure the District's consistent compliance with its responsibilities under Title IX and this policy. As appropriate, the Superintendent may delegate, or permit a Title IX Coordinator to delegate, specific duties to one (1) or more designees.

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

When notified of conduct that reasonably may constitute sex discrimination under Title IX, the Title IX Coordinator shall take the following actions to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects:

- (i) Treat the complainant and respondent equitably;
- (ii) Offer and coordinate supportive measures, as appropriate, for the complainant. In addition, if the District has initiated grievance procedures, or offered an informal resolution process to the respondent, offer and coordinate supportive measures, as appropriate, for the respondent;

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- (iii)
 - (A) Notify the complainant or, if the complainant is unknown, the individual who reported the conduct, of the grievance procedures, and the informal resolution process, if available and appropriate; and
 - (B) If a complaint is made, notify the respondent of the grievance procedures, and the informal resolution process, if available and appropriate;
- (iv) In response to a complaint, initiate the grievance procedures, or the informal resolution process if available and appropriate and requested by all parties;
- (v) 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.
 - (A) To make this fact-specific determination, the Title IX Coordinator must consider, at a minimum, the following factors:
 - (1) The complainant's request not to proceed with initiation of a complaint;
 - (2) The complainant's reasonable safety concerns regarding initiation of a complaint;
 - (3) The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
 - (4) 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;
 - (5) The age and relationship of the parties, including whether the respondent is an employee of the District;
 - (6) The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
 - (7) The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and

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- (8) Whether the District could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures.
- (B) If, after considering these and other relevant factors, the Title IX Coordinator determines that 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.
- (vi) If initiating a complaint under paragraph (v) of this section, 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
- (vii) Regardless of whether a complaint is initiated, take other appropriate prompt and effective steps, in addition to steps necessary 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.

A Title IX Coordinator is not required to comply with paragraphs (i) through (vii) of this section upon being notified of conduct that may constitute sex discrimination if the Title IX Coordinator reasonably determines that the conduct as alleged could not constitute sex discrimination under Title IX.

In addition to the foregoing, if a complainant or respondent is a student with a disability, the Title IX Coordinator will consult with one or more members, as appropriate, of the student's Individualized Education Program (IEP) team, if any, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision under 34 CFR 104.35(c), if any, to determine how to comply with the requirements of the Individuals with Disabilities Education Act, and Section 504 of the Rehabilitation Act of 1973.

Supportive Measures

Regardless of whether there has been a complaint, as that term is defined in Title IX and this policy, the District will offer and coordinate supportive measures when notified of conduct that reasonably may constitute sex discrimination under Title IX or this policy.

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Supportive measures may vary depending on what the District deems to be reasonably available. These measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one (1) or more parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties or the District's educational environment, or to provide support during the grievance procedures, or during the informal resolution process. The District shall not impose such measures for punitive or disciplinary reasons.

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

The District will provide a complainant or respondent with a timely opportunity to seek, from an appropriate and impartial employee, modification or reversal of the District's decision to provide, deny, modify, or terminate supportive measures applicable to them. The impartial employee must be someone other than the employee who made the challenged decision and must have authority to modify or reverse the decision, if the impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the definition of supportive measures. The District will also provide a party with the opportunity to seek additional modification or termination of a supportive measure applicable to them if circumstances change materially.

The District will not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one (1) party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity, or when otherwise allowed by law or this policy.

If the complainant or respondent is a student with a disability, the Title IX Coordinator will consult with one (1) or more members, as appropriate, of the student's individualized education program (IEP) team, if any, or one (1) or more members, as appropriate, of the group of persons responsible for the student's placement decision under 34 CFR 104.35(c), if any, to determine how to comply with the requirements of the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973 in the implementation of supportive measures.

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For allegations of sex discrimination other than sex-based harassment or retaliation, the provision of supportive measures does not require the District, its employee, or any other person authorized to provide aid, benefit, or service on the District's behalf to alter the alleged discriminatory conduct for the purpose of providing a supportive measure.

Emergency Removal. Nothing in this policy precludes the District from removing a respondent from the District's education program or activity on an emergency basis, provided that the District undertakes an individualized safety and risk analysis, determines that an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision must not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990.

Administrative leave. Nothing in this policy precludes a District from placing an employee respondent on administrative leave from employment responsibilities during the pendency of the District's grievance procedures. This provision must not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990.

Informal Resolution

At any time prior to determining whether sex discrimination occurred under § 106.45, the District may offer to a complainant and respondent an informal resolution process, unless the complaint includes allegations that an employee engaged in sex-based harassment of a student, or such a process would conflict with Federal, State or local law. When an informal resolution process is offered, the Title IX Coordinator will also, to the extent necessary, take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the District's education program or activity.

Subject to the limitations set forth above, the District has discretion to determine whether it is appropriate to offer an informal resolution process when it receives information about conduct that reasonably may constitute sex discrimination under Title IX or this part or when a complaint of sex discrimination is made, and may decline to offer informal resolution despite one or more of the parties' wishes. Among other reasons, the District may decline to allow informal resolution when the District determines that the alleged conduct would present a future risk of harm to others.

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The District will not require or pressure the parties to participate in an informal resolution process. The District must obtain the parties' voluntary consent to the informal resolution process and must not require waiver of the right to an investigation and determination of a complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right.

Before initiation of an informal resolution process, the District must provide to the parties notice that explains:

- (i) The allegations;
- (ii) The requirements of the informal resolution process;
- (iii) That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the District's grievance procedures;
- (iv) That the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming grievance procedures arising from the same allegations;
- (v) The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- (vi) What information the District will maintain and whether and how the District could disclose such information for use in grievance procedures under § 106.45, if grievance procedures are initiated or resumed.

The facilitator for the informal resolution process must not be the same person as the investigator or the decision-maker in the District's grievance procedures. Any person designated by the District to facilitate an informal resolution process must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Any person facilitating informal resolution must receive training under § 106.8(d)(3) and this policy.

Potential terms that may be included in an informal resolution agreement include but are not limited to:

- (i) Restrictions on contact; and
- (ii) Restrictions on the respondent's participation in one or more of the District's programs or activities or attendance at specific events, including restrictions the District could have imposed as remedies or disciplinary sanctions had the District determined at the conclusion of the District's grievance procedures that sex discrimination occurred.

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Pregnancy, Family, or Marital Status, Pregnancy and related conditions; Students:

- (a) Status generally. The District shall not adopt or implement any policy, practice, or procedure concerning a student's current, potential, or past parental, family, or marital status that treats students differently on the basis of sex.
- (b) Pregnancy or related conditions.
 - (1) Nondiscrimination. The District must not discriminate in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions. The District does not engage in prohibited discrimination when it allows a student, based on pregnancy or related conditions, to voluntarily participate in a separate portion of its education program or activity provided the District ensures that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions.
 - (2) Responsibility to provide Title IX Coordinator contact and other information. The District must ensure that when a student, or a person who has a legal right to act on behalf of the student, informs any employee of the student's pregnancy or related conditions, unless the employee reasonably believes that the Title IX Coordinator has been notified, the employee promptly provides that person with the Title IX Coordinator's contact information and informs that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the District's education program or activity.
 - (3) Specific actions to prevent discrimination and ensure equal access. The District shall take specific actions under paragraphs (b)(3)(i) through (vi) of this section to promptly and effectively prevent sex discrimination and ensure equal access to the District's education program or activity once the student, or a person who has a legal right to act on behalf of the student, notifies the Title IX Coordinator of the student's pregnancy or related conditions. The Title IX Coordinator must coordinate these actions.
 - ▲ (i) Responsibility to provide information about District obligations. The District must inform the student, and if applicable, the person who notified the Title IX Coordinator of the student's pregnancy or related conditions and has a legal right to act on behalf of the student, of the District's obligations under paragraphs (b)(1) through (5) of this section and § 106.44(j) and provide the District's notice of nondiscrimination under § 106.8(c)(1).

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- ▲ (ii) *Reasonable modifications.*
 - ◆ (A). The District must make reasonable modifications to its policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to the District's education program or activity. Each reasonable modification must be based on the student's individualized needs. In determining what modifications are required under this paragraph, the District must consult with the student. A modification that a District can demonstrate would fundamentally alter the nature of its education program or activity is not a reasonable modification.
 - ◆ (B) The student has discretion to accept or decline each reasonable modification offered by the District. If a student accepts a District's offered reasonable modification, the District must implement it.
 - ◆ (C) Reasonable modifications may include, but are not limited to, breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom; intermittent absences to attend medical appointments; access to online or homebound education; changes in schedule or course sequence; extensions of time for coursework and rescheduling of tests and examinations; allowing a student to sit or stand, or carry or keep water nearby; counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access; or other changes to policies, practices, or procedures.
- ▲ (iii) *Voluntary access to separate and comparable portion of program or activity.* The District must allow the student to voluntarily access any separate and comparable portion of the District 's education program or activity under paragraph (b)(1) of this section.
- ▲ (iv) *Voluntary leaves of absence.* The District must allow the student to voluntarily take a leave of absence from the District 's education program or activity to cover, at minimum, the period of time deemed medically necessary by the student's licensed healthcare provider. To the extent that a student qualifies for leave under a leave policy maintained by a District that allows a greater period of time than the medically necessary period, the District must permit the student to take voluntary leave under that policy instead if the student so chooses. When the student returns to the District 's education program or activity, the student must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began.

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- ▲ (v) Lactation space. The District must ensure that the student can access a lactation space, which must be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.
- ▲ (vi) Limitation on supporting documentation. The District must not require supporting documentation under paragraphs (b)(3)(ii) through (v) unless the documentation is necessary and reasonable for the District to determine the reasonable modifications to make or whether to take additional specific actions under paragraphs (b)(3)(ii) through (v). Examples of situations when requiring supporting documentation is not necessary and reasonable include, but are not limited to, when the student's need for a specific action under paragraphs (b)(3)(ii) through (v) is obvious, such as when a student who is pregnant needs a bigger uniform; when the student has previously provided the District with sufficient supporting documentation; when the reasonable modification because of pregnancy or related conditions at issue is allowing a student to carry or keep water nearby and drink, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom; when the student has lactation needs; or when the specific action under paragraphs (b)(3)(ii) through (v) is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.
- (4) Comparable treatment to other temporary medical conditions. To the extent consistent with paragraph (b)(3) of this section, the District must treat pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions with respect to any medical or hospital benefit, service, plan, or policy the District administers, operates, offers, or participates in with respect to students admitted to the District's education program or activity.
- (5) Certification to participate. A District must not require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in the District's class, program, or extracurricular activity unless:
 - ▲ (i) The certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;
 - ▲ (ii) The District requires such certification of all students participating in the class, program, or extracurricular activity; and
 - ▲ (iii) The information obtained is not used as a basis for discrimination prohibited by this part.

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Pregnancy, Family, or Marital Status, Pregnancy and related conditions; Employment:

- (a) Status generally. The District will not adopt or implement any policy, practice, or procedure, or take any employment action, on the basis of sex:
 - (1) Concerning the current, potential, or past parental, family, or marital status of an employee or applicant for employment, which treats persons differently; or
 - (2) That is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.
- (b) Pregnancy or related conditions. The District will not discriminate against any employee or applicant for employment on the basis of current, potential, or past pregnancy or related conditions.
- (c) Comparable treatment to other temporary medical conditions. The District will treat pregnancy or related conditions as any other temporary medical conditions for all job-related purposes, including commencement, duration and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; and reinstatement; and under any fringe benefit offered to employees by virtue of employment.
- (d) Voluntary leaves of absence. In the case of an employee with insufficient accrued paid leave or accrued employment time to qualify for leave under such a policy, the District will treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.
- (e) Lactation time and space.
 - (1) The District will provide reasonable break time for an employee to express breast milk or breastfeed as needed.
 - (2) The District will ensure that an employee can access a lactation space, which must be a space other than a bathroom that is clean, shielded from view, free from intrusion from others, and may be used by an employee for expressing breast milk or breastfeeding as needed.

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Retaliation

Retaliation, as defined by Title IX and this Policy, including peer retaliation, is prohibited in the District's education program or activity. When the District has information about conduct that reasonably may constitute retaliation under Title IX or this policy, the District will comply with § 106.44 and respond in accordance with its framework for responding to knowledge of conduct that may constitute sex discrimination. Upon receiving a complaint alleging retaliation, the District will initiate its grievance procedures under § 106.45, or, as appropriate, an informal resolution process.

Training

The District must ensure that the persons described below receive training related to their duties under Title IX promptly upon hiring or change of positions that alters their duties under Title IX, and annually thereafter. The training must not rely on sex stereotypes.

All District employees must be trained on:

- The District's obligation to address sex discrimination in its education program or activity;
- The scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment; and
- All applicable notification and information requirements under §§ 106.40(b)(2) and 106.44.

In addition to the training required for all employees, all investigators, decisionmakers, and other persons who are responsible for implementing the District's grievance procedures or have the authority to modify or terminate supportive measures under § 106.44(g)(4) must be trained on the following topics to the extent related to their responsibilities:

- The District's obligations under § 106.44;
- The District's grievance procedures under § 106.45;
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and
- The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under § 106.45.

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In addition to the training requirements for all employees, all facilitators of an informal resolution process under § 106.44(k) must be trained on the rules and practices associated with the District's informal resolution process and on how to serve impartially, including by avoiding conflicts of interest and bias.

In addition to the training requirements for all employees, all investigators, decisionmakers, and other persons who are responsible for implementing the District's grievance procedures or have the authority to modify or terminate supportive measures, and all facilitators of an informal resolution process, the Title IX Coordinator and any designees shall be trained on their specific responsibilities under paragraph (a) of this section, §§ 106.40(b)(3), 106.44(f) and (g), the District's recordkeeping system and the requirements of paragraph (f) of this section, and any other training necessary to coordinate the District's compliance with Title IX.

Prohibited Disclosure of Personally Identifiable Information

The District shall not disclose personally identifiable information obtained in the course of complying with Title IX and this policy, except in the following circumstances:

- (1) When the District has obtained prior written consent from a person with the legal right to consent to the disclosure;
- (2) When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- (3) To carry out the purposes of this part, including action taken to address conduct that reasonably may constitute sex discrimination under Title IX in the District's education program or activity;
- (4) As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or other funding agreement; or
- (5) To the extent such disclosures are not otherwise in conflict with Title IX or this part, when required by State or local law or when permitted under the Family Educational Rights and Privacy Act (FERPA) or its implementing regulations.

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Recordkeeping

The District shall maintain for a period of at least seven (7) years:

- For each complaint of sex discrimination, records documenting the informal resolution process under § 106.44(k) or the grievance procedures under § 106.45, and the resulting outcome.
- For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or this part, including notifications under § 106.44(c)(1) or (2), records documenting the actions the District took to meet its obligations under § 106.44.
- All materials used to provide training to employees as set forth in this policy. The District shall make these training materials available upon request for inspection by members of the public.

Definitions. As used in this policy and related procedures, the term:

Complainant means:

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

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

Confidential employee means:

- An employee of a District whose communications are privileged or confidential under Federal or State law. The employee's confidential status, for purposes of this part, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
- An employee of a District whom the District has designated as confidential under this part for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services; or

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

Parental status, as used in §§ 106.21(c)(2)(i), 106.37(a)(3), 106.40(a), and 106.57(a)(1), means the status of a person who, with respect to another person who is under the age of eighteen (18) or who is eighteen (18) or older but is incapable of self-care because of a physical or mental disability, is:

- (1) A biological parent;
- (2) An adoptive parent;
- (3) A foster parent;
- (4) A stepparent;
- (5) A legal custodian or guardian;
- (6) In loco parentis with respect to such a person; or
- (7) Actively seeking legal custody, guardianship, visitation, or adoption of such a person.

Party means a complainant or respondent.

Peer retaliation means retaliation by a student against another student.

Pregnancy or related conditions means:

- (1) Pregnancy, childbirth, termination of pregnancy, or lactation;
- (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- (3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

Program or activity and program means all of the operations of the District.

Relevant means related to the allegations of sex discrimination under investigation as part of the grievance procedures under § 106.45, and if applicable § 106.46. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

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

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

Retaliation means intimidation, threats, coercion, or discrimination against any person by the District, a student, or an employee or other person authorized by the District to provide aid, benefit, or service under the District's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process under § 106.44(k), in grievance procedures under § 106.45, and if applicable § 106.46, and in any other actions taken by a District under § 106.44(f)(1). Nothing in this definition or this part precludes a District from requiring an employee or other person authorized by a District to provide aid, benefit, or service under the District's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this part.

Sex-based harassment prohibited by this part is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in § 106.10, 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;

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- (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.

Student means a person who has gained admission.

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Student with a disability means a student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, [29 U.S.C. 705\(9\)\(B\)](#), (20)(B), or a child with a disability as defined in the Individuals with Disabilities Education Act, [20 U.S.C. 1401\(3\)](#).

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

- (1) Restore or preserve that party's access to the District's education program or activity, including measures that are designed to protect the safety of the parties or the District's educational environment; or
- (2) Provide support during the District's grievance procedures under § 106.45, or during the informal resolution process under § 106.44(k).

Title IX means Title IX of the Education Amendments of 1972 (Pub. L. 92-318; [20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688, 1689](#)), as amended, and its implementing regulations.

Adopted: date of manual adoption

LEGAL REF.: 22-31-1 NMSA *et seq.*, School Athletic Equity Act
28-1-2 NMSA *et seq.*
6.13.4.8 NMAC, Gender Equity in Sports
20 U.S.C. 1092(f)(6)(A)(v), Sexual Assault
20 U.S.C. 1400 *et seq.*, Individuals with Disabilities
Education Act
20 U.S.C. 1681, Education Amendments of 1972, Title IX
20 U.S.C. 1703, Equal Employment Opportunity Act of 1972
29 U.S.C. 794, Rehabilitation Act of 1973, (Section 504)
34 U.S.C. 12291(a)(8), (10), (30) Domestic Violence, Dating
Violence, Stalking
42 U.S.C. 2000, Civil Rights Act of 1964 as amended, Title
VII
42 U.S.C. 12101 *et seq.*, Americans with Disabilities Act
34 CFR Part 106, Nondiscrimination on the basis of Sex in
Education

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CROSS REF.: AC - Nondiscrimination/Equal Opportunity
GBA - Equal Employment Opportunity
GCQF - Discipline, Suspension, Termination and Discharge
of Professional Staff Members
GDQD - Discipline, Suspension, Termination and Discharge
of Support Staff Members
IHBA - Special Instructional Programs and
Accommodations for Disabled Students
IHBCA – Programs for Pregnant/Parenting Students
JB - Equal Educational Opportunities
~~JII – Student Concerns, Complaints, and Grievances~~
JIE - Pregnant/Parenting Student
JIG – Married Students
JJIB - Interscholastic Sports
JK - Student Discipline
JKD - Student Suspension/Expulsion
KED - Public Concerns/Complaints about Facilities or
Services
KFA - Public Conduct on School Property

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REGULATION**REGULATION****NONDISCRIMINATION ON THE
BASIS OF SEX****(Complaint/Grievance Procedure)**

~~The procedures that follow are specified in 34 C.F.R. Part 106 at 106.45 as required by 106.44a and though listed as a regulation are federal regulations implementing Title IX of the Education Amendments of 1972 as amended. Therefore, this regulation is considered the same as policy.~~

~~The following procedures apply to all reports and formal complaints of sexual harassment that may be received with the following exceptions for reports of sex discrimination that are not formal complaints:~~

- ~~• notice of the allegations,~~
- ~~• consolidation of formal complaints,~~
- ~~• dismissal of formal complaints,~~
- ~~• investigation of formal complaints, and~~
- ~~• any part of a noted procedure that is specified for a formal complaint.~~

**~~Discrimination on the
Basis of Sex~~**

~~A District's treatment of a complainant or a respondent in response to a report or formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX. For the purpose of addressing formal complaints of sexual harassment, the grievance process must comply with the following requirements. Any provisions, rules, or practices other than those required by § 106.45 as part of this grievance process for handling formal complaints of sexual harassment as defined in § 106.30, must apply equally to both parties.~~

~~Basic Requirements~~

~~A district's grievance process will:~~

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- ~~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, and by following this grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent. Remedies will be designed to restore or preserve equal access to the District's education program or activity. Such remedies will include the same individualized services described in § 106.30 as "supportive measures;" however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;~~
- ~~Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness;~~
- ~~Any individual designated by a District as a Title IX Coordinator, investigator, decision maker, or any person designated by a District to facilitate an informal resolution process, shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The District will ensure that Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process, receive training on how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The District will ensure that decision makers receive training on any technology to be used at a live hearing and on 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, as set forth in paragraph (b)(6) of § 106.45. The District also will ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in paragraph (b)(5)(vii) of § 106.45. Any materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and shall promote impartial investigations and adjudications of formal complaints of sexual harassment;~~
- ~~It is to be presumed that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;~~
- ~~Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the District offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or~~

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~~the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as 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 disabilities;~~

- ~~• Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the District may implement following any determination of responsibility;~~
- ~~• Use the preponderance of the evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment;~~
- ~~• Include the procedures and permissible bases for the complainant and respondent to appeal;~~
- ~~• Describe the range of supportive measures available to complainants and respondents; and~~
- ~~• Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.~~

~~Notice of Allegations~~

~~The following is required upon receipt of a formal complaint~~

- ~~• The District must provide the following written notice to the parties who are known:
 - ~~▪ Notice of the District's grievance process that complies with § 106.45, including any informal resolution process.~~
 - ~~▪ Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include if known:
 - ~~★ the identities of parties involved in the incident,~~
 - ~~★ the conduct allegedly constituting sexual harassment under § 106.30, and~~
 - ~~★ the date and location of the alleged incident.~~~~~~

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- ~~The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.~~
- ~~The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of § 106.45, and may request to inspect and review evidence under paragraph (b)(5)(vi) of § 106.45.~~
- ~~The written notice must inform the parties of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. That information may be found at:

 - ★ ~~GBEB Standard II, GBEBB last sentence and GCQF Misconduct for Professional staff,~~
 - ★ ~~GDQD Categories of Misconduct for Support Staff,~~
 - ★ ~~JK for students.~~~~

~~If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to paragraph (b)(2)(i)(B) of § 106.45, the District must provide notice of the additional allegations to the parties whose identities are known.~~

Dismissal of a formal complaint:

- ~~The District must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the District's education program or activity, or did not occur against a person in the United States, then the District must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX or § 106. Such a dismissal does not preclude action under another provision of the District's code of conduct.~~
- ~~The District may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; or the respondent is no longer enrolled or employed by the District; or specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.~~

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- ~~Upon a dismissal required or permitted pursuant to paragraph (b)(3)(i) or (b)(3)(ii) of § 106.45, the District must promptly send written notice of the dismissal and reasons therefor simultaneously to the parties.~~

~~Consolidation of Formal Complaints~~

~~The District may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one (1) complainant against one (1) or more respondents, or by one (1) party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one (1) complainant or more than one (1) respondent, references in § 106.45 to the singular "party," "complainant," or "respondent" include the plural, as applicable.~~

~~Investigation of Formal Complaints~~

~~When investigating a formal complaint and throughout the grievance process, the District must:~~

- ~~Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the District and not on the parties provided that the District cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the District obtains that party's voluntary, written consent to do so for a grievance process under § 106.45 (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the District must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3);~~
- ~~Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;~~
- ~~Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;~~
- ~~Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;~~

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- ~~Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate;~~
- ~~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, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.~~
 - ~~Prior to completion of the investigative report, the District must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report.~~
 - ~~The District must make all such evidence available for the parties' inspection and review and at any hearing, give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and~~
- ~~Create an investigative report that fairly summarizes relevant evidence and, at least ten (10) days prior to a hearing (if a hearing is required under § 106.45 or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.~~

~~Alternative to Hearings~~

~~The District's grievance process will not provide for a hearing.~~

- ~~After the District has sent the investigative report to the parties pursuant to paragraph (b)(5)(vii) of § 106.45 and before reaching a determination regarding responsibility, the decision maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.~~
- ~~Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior 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.~~

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~~The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.~~

~~**Determination Regarding Responsibility**~~

~~The decision-maker(s), who cannot be the same persons as the Title IX Coordinator or the investigators, must issue a written determination regarding responsibility. To reach this determination, the decision-maker(s) must apply the standard of evidence described herein.~~

~~The written determination must include:~~

- ~~• Identification of the allegations potentially constituting sexual harassment as defined in § 106.30;~~
- ~~• 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, methods used to gather other evidence, and hearings held;~~
- ~~• Findings of fact supporting the determination;~~
- ~~• Conclusions regarding the application of the District's code of conduct to the facts;~~
- ~~• A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the District imposes on the respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided by the District to the complainant; and~~
- ~~• The District's procedures and permissible bases for the complainant and respondent to appeal if the District offers an appeal.~~

~~The District must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.~~

~~The Title IX Coordinator is responsible for ensuring the implementation of any remedies.~~

~~**Appeal**~~

~~The District must offer both parties an appeal from a determination regarding responsibility, and from the District's dismissal of a formal complaint or any allegations therein, on the following bases:~~

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- ~~Procedural irregularity that affected the outcome of the matter;~~
- ~~New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and~~
- ~~The Title IX Coordinator, investigators, or decision maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.~~

~~The District may offer an appeal equally to both parties on additional bases.~~

~~As to all appeals, the District must:~~

- ~~Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;~~
- ~~Ensure that the decision maker(s) for the appeal is not the same person as the decision maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;~~
- ~~Ensure that the decision maker(s) for the appeal complies with the standards set forth in paragraph (b)(1)(iii) of § 106.45;~~
- ~~Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;~~
- ~~Issue a written decision describing the result of the appeal and the rationale for the result; and~~
- ~~Provide the written decision simultaneously to both parties.~~

~~Informal Resolution~~

~~The District may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with § 106.45. Similarly, the District may not require the parties to participate in an informal resolution process under § 106.45 and may not offer an informal resolution process unless a formal complaint is filed.~~

~~At any time prior to reaching a determination regarding responsibility the District may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the District:~~

- ~~Provides to the parties a written notice disclosing, the allegations, 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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- ~~• Obtains the parties' voluntary, written consent to the informal resolution process; and~~
- ~~• Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.~~

~~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; and~~
- ~~• Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.~~

Recordkeeping

~~The District must maintain for a period of seven (7) years records of:~~

- ~~• Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under paragraph (b)(6)(i) of § 106.45, 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;~~
- ~~• Any informal resolution and the result therefrom;~~
- ~~• All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The District must make these training materials publicly available on its website, or if the District does not maintain a website the District must make these materials available upon request for inspection by members of the public; and~~
- ~~• For each response required under § 106.44, the District must create, and maintain for a period of seven (7) years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the District must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the District's education program or activity.~~

If the District does not provide a Complainant Supportive Measures

~~If the District does not provide a complainant with supportive measures, then the District must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken.~~

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The following grievance procedures are required by the Title IX regulations, 34 C.F.R. Part 106 at 106.45, for complaints of sex discrimination, including sex-based harassment, and Title IX retaliation. Though described as a “regulation” under the policy manual, this regulation is considered the same as policy and 34 C.F.R 106.45 and Policy ACA are incorporated herein. Terms used in this procedure shall have the meanings provided in the Title IX regulations and Policy ACA.

Complaints

The District’s receipt of a complaint initiates the Title IX grievance process. A complaint is 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.

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

- A “complainant,” which includes:
 - a student or employee of The District who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
 - a person other than a student or employee of The District who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in The District’s education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- The District’s Title IX Coordinator.

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

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

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The District may consolidate complaints of sex discrimination against more than one (1) respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. The District will not consolidate complaints if it would violate the Family Educational Rights and Privacy Act (FERPA).

Notice of Allegations

Upon initiation of The District's Title IX grievance procedures, the District will notify the

parties of the following:

- The District's Title IX grievance procedures and any informal resolution process;
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s) to the extent the information is available;
- That retaliation is prohibited; and
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. If the District 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 District decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided or that are included in a complaint that is consolidated, The District will notify the parties of the additional allegations.

Dismissal of a Complaint

The District may dismiss a complaint of sex discrimination if:

- The District 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 District determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- The District determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, the District will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, The District will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the District will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

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

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

If the dismissal is appealed, The District will:

- Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Implement appeal procedures equally for the parties;
- Ensure that the decision-maker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decision-maker for the appeal has been trained consistent with the Title IX regulations;

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- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, the District will, at a minimum:

- Offer supportive measures to the complainant as appropriate;
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within the District's education program or activity.

Informal Resolution

In lieu of resolving a complaint through the District's Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process as described in Policy ACA. No informal resolution process will be used to resolve a complaint that includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or when such a process would conflict with Federal, State, or local law. No appeal is available for a resolution agreed to in an informal resolution process.

Supportive Measures

The District will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person's access to the District's education program or activity or provide support during the District's Title IX grievance procedures or during the informal resolution process. For complaints of sex-based harassment, these supportive measures may include, but are not limited to, counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one (1) or more parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

The District is not precluded from removing a respondent on an emergency basis, or placing an employee respondent on administrative leave, provided that the District complies with its obligations under Title IX and Policy ACA.

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Basic Requirements of Title IX Grievance Procedures

The District will treat complainants and respondents equitably.

The District requires that any Title IX Coordinator, investigator, or decision-maker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A decision-maker may be the same person as the Title IX Coordinator or investigator.

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

The District has established the following timeframes for the major stages of the grievance procedure. Timelines are not jurisdictional but merely establish expectations for the reasonably prompt resolution of Title IX complaints in most cases. As used in this procedure, a “day” is a day the office of the Title IX Coordinator is open for business.

- Evaluation of the complaint (i.e., the decision whether to dismiss or investigate a complaint): [REDACTED] days.
- Appeal of dismissal: [REDACTED] days to file; [REDACTED] days to conduct the appeal.
- Notices of allegations: [REDACTED] days.
- Conduct investigation: [REDACTED] days.
- Evidence organization, summarization by investigator: [REDACTED] days.
- Evidence review and responses by parties: [REDACTED] days.
- Decision-maker evidence evaluation and determination: [REDACTED] days.

The District has also established the following process that allows 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: The Title IX Coordinator may grant extensions on the Title IX Coordinator’s own initiative or upon a request presented by a party, investigator, decision-maker, District administration, witness, state agency, or law enforcement agency and for other good cause shown. The circumstances warranting an extension will be noted in the Title IX records related to the particular Title IX matter.

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

The District will objectively evaluate all evidence that is relevant and not otherwise impermissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

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

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

In addition to the foregoing, if a complainant or respondent is a student with a disability, the Title IX Coordinator will consult with one or more members, as appropriate, of the student's individualized education program (IEP) team, if any, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision under 34 CFR 104.35(c), if any, to determine how to comply with the requirements of the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973.

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Investigation

The District will provide for adequate, reliable, and impartial investigation of complaints. The burden is on the District—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred. The District will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible. The District will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance. The District will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

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

Questioning the Parties and Witnesses

The District will provide a process that enables the decision-maker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination. To the extent the decision-maker is the same person as the investigator, the decision-maker may, but is not obligated to, ask questions of the parties or witnesses if they were already asked by the decision-maker in the capacity of investigator. If the decision-maker was not also the investigator, the Title IX Coordinator will facilitate an opportunity for the decision-maker to ask questions. The Decision-maker may ask the parties for written responses to written questions, or may question the parties orally in-person, or may structure questions in any manner so long as equitable to the parties and otherwise in compliance with Title IX.

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**Determination Whether Sex
Discrimination Occurred**

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the District will:

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

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- Not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred. The District may address false statements by initiating a disciplinary processes under its other policies as long as there is evidence of independent of the determination whether sex discrimination occurred.

Disciplinary Sanctions and Remedies:

Following a determination that sex discrimination occurred, the District may impose disciplinary sanctions as described below.

Student respondents may be subject to the disciplinary sanctions set forth in Policies and Regulations JK, JK-R, JK-EA, JKB, JKB-R, JKD, JKDA or any other policies, regulations, or school rules applicable to students. Nothing in this procedure is intended to preclude any disciplinary sanctions that the District may lawfully impose on students, provided the student is first determined to have violated the District's policy on sex discrimination pursuant to the Title IX grievance process. In all cases in which the sanction provided by the Title IX decision-maker on a student is less than long-term suspension or expulsion, or that does not require additional procedures under state or federal law, the decision and sanction of the Title IX decision-maker shall be final, subject to the appeal rights set forth in the following section. In the event the decision-maker, or a decision-maker on appeal, provides for the sanction of long-term suspension or expulsion of a student, as those terms are defined in New Mexico Administrative Code (NMAC) 6.11.2, the District will initiate the procedures of NMAC 6.11.2 and Policy JKD prior to imposition of the sanction of long-term suspension or expulsion and the student will be entitled to the rights provided in the NMAC, Policy JKD, and applicable law, including any relevant law related to students with disabilities. In all cases, students with disabilities will be entitled to their rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, or other applicable law. Subject to applicable privacy rules, the record from the Title IX grievance process may be used as evidence in the long-term suspension or expulsion proceeding. In the event the long-term suspension/expulsion disciplinary sanction resulting from the Title IX grievance procedure is not upheld, the District may impose lesser disciplinary sanctions consistent with the Title IX determination that respondent engaged in sex discrimination.

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Employee respondents may be subject to the disciplinary sanctions set forth in Policies GCQF, GDQD, or any other policies, regulations, or school rules applicable to employees. Nothing in this procedure is intended to preclude any disciplinary sanctions that the District may lawfully impose on an employee, provided the employee is first determined to have violated the District's policy on sex discrimination pursuant to the Title IX grievance process. In all cases in which the sanction provided by the Title IX decision-maker on an employee is less than termination or discharge, as those terms are used in the School Personnel Act, or if the employee is not entitled to the protections in the School Personnel Act, the decision and sanction of the Title IX decision-maker shall be final, subject to the appeal rights set forth in the following section. In the event the Title IX decision-maker, or a decision-maker on appeal, provides for the sanction of termination or discharge, the Superintendent will comply with the School Personnel Act, if applicable, prior to the imposition of the sanction. Subject to applicable privacy rules, the record from the Title IX grievance process may be used as evidence in any proceeding under the School Personnel Act. In the event the long-term termination/discharge disciplinary sanction resulting from the Title IX grievance procedure is not upheld in any applicable School Personnel Act procedure, the District may impose lesser disciplinary sanctions consistent with the Title IX determination that respondent engaged in sex discrimination. Nothing herein is intended to provide any employee with any due process rights not provided for in the School Personnel Act or Title IX.

The District may also provide remedies, which may include supportive measures provided, as appropriate, to a complainant or any other person the District identifies as having had their equal access to the District's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the District's education program or activity after a district determines that sex discrimination occurred. A wide variety of remedies affecting personal circumstances may be appropriate depending on the circumstance. Remedies may cause additional burdens upon respondents who have violated the prohibition on sex discrimination. Remedies may include recommended adjustments in District policies and practices.

Appeal of Determinations

The determination and disciplinary sanction of the Title IX decision-maker may be appealed by any party, by providing written notice of appeal to the Title IX Coordinator, within five (5) business days of receipt of the determination, solely on the following bases:

- Procedural irregularity that would change the outcome;

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- New evidence that would change the outcome and that was not reasonably available when the determination was made; and
- The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

The notice of appeal shall set forth the basis for the appeal.

Upon receipt of an appeal as provided in this section, the District will:

- Notify the parties of the appeal;
- Implement appeal procedures equally for the parties;
- Ensure that the decision-maker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decision-maker for the appeal has been trained consistent with the Title IX regulations;
- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result.

The decision of the decision-maker for the appeal shall be final, with no further appeal.

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REGULATION **REGULATION**

**~~NONDISCRIMINATION ON THE
BASIS OF SEX~~**

~~Compliance Officer~~

~~The Title IX Coordinator shall be the compliance officer. Any person who feels unlawfully discriminated against or to have been the victim of unlawful discrimination by an agent or employee of the District or who knows of such discrimination against another person on the basis of sex should file a complaint with the Title IX Coordinator's Office using the following information.~~

Name: _____
 Title: Title IX Coordinator
 Address: _____

 Phone: _____
 E-mail: _____

~~Grievance Procedure~~

~~Any student or employee of the School District who believes he or she has been discriminated against, denied a benefit, or excluded from participation in any School District education program or activity on the basis of sex in violation of Board of Education Policy, may file a report of sex discrimination or a formal complaint with the Title IX Coordinator.~~

~~Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment). Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator. A report may be made to any District employee and that employee shall make the report to the Title IX Coordinator within one (1) school day of receipt. Failure to make such a report upon its receipt shall expose the employee to disciplinary action in accord with District policies.~~

~~The District is committed to investigating each report and to taking appropriate action on all confirmed violations of policy. The Title IX Coordinator shall have reports investigated and document those filed pursuant to this regulation as soon as reasonable. In investigating the report, confidentiality will be maintained to the extent reasonably possible.~~

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

~~Upon receiving of a report regarding sex discrimination, which may include sexual harassment, with or without a formal complaint, the Title IX Coordinator shall have a response provided to complainant and respondent of non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge which provide supportive measures and which shall include, discussion of supportive measures and inform them of what is available without a formal complaint.~~

~~The Title IX Coordinator is responsible for implementation of supportive measures.~~

~~Upon the receipt of a report regarding sex discrimination or sexual harassment the Title IX Coordinator shall promptly contact the complainant to:~~

- ~~• discuss the availability of supportive measures,~~
- ~~• consider the complainant's wishes with respect to supportive measures,~~
- ~~• inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and~~
- ~~• explain to the complainant the process for filing a formal complaint (See ACA-E).~~

~~Supportive measures may include:~~

- ~~• counseling,~~
- ~~• extensions of deadlines or other course related adjustments,~~
- ~~• modifications of work or class schedules,~~
- ~~• campus escort services,~~
- ~~• mutual restrictions on contact between the parties,~~
- ~~• changes in work or housing locations,~~
- ~~• leaves of absence,~~
- ~~• increased security and monitoring of certain areas of the campus, and~~
- ~~• administrative leave while a grievance is pending,~~
- ~~• emergency removal (following an individualized safety and risk analysis), and~~
- ~~• other similar measures.~~

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~~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 to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.~~

~~The Title IX Coordinator shall contact the complainant and gather information to complete the grievance report. Following completion of the forms, the Title IX Coordinator shall cause an investigation and documentation of complaints filed pursuant to Policy ACA and Regulation ACA RA in so far as it applies and as soon as is reasonable. In investigating the grievance, confidentiality will be maintained to the extent reasonably possible.~~

~~The Title IX Coordinator shall, upon the investigations drawing to a close and prior to completion of the investigative report, send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy~~

~~The parties shall have at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report.~~

~~After the District has sent the investigative report to the parties and before reaching a determination regarding responsibility, the Superintendent or decision maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.~~

~~The Superintendent or decision maker shall upon having the investigative report completed, and if there is reason to believe that a violation of policy has occurred:~~

- ~~• provide a written determination which must include;~~
 - ~~▪ identification of the allegations potentially constituting sexual harassment,~~
 - ~~▪ 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.~~
 - ~~★ methods used to gather other evidence, and~~
 - ~~★ hearings held.~~

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- ~~findings of fact supporting the determination.~~
- ~~conclusions regarding the application of the District's code of conduct to the facts.~~
- ~~a statement of, and rationale for, the result as to each allegation, including

 - ★ ~~a determination regarding responsibility.~~
 - ★ ~~any disciplinary sanctions the District imposes on the respondent.~~
 - ★ ~~whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided by the District to the complainant.~~~~
- ~~the District's procedures and permissible bases for the complainant and respondent to appeal if the District offers an appeal.~~

~~If the person alleged to have violated policy is a teacher or an administrator, the due process provisions of the District's Policy GCQF shall apply. In cases of serious misconduct, dismissal or suspension proceedings in accordance with policy may be initiated.~~

~~If the person alleged to have violated policy is a support staff employee, due process and discipline under Policy GDQD may apply if the evidence so warrants.~~

~~If the person alleged to have violated policy is a student, the discipline may be imposed in accordance with Policies JK and JKD.~~

Appeals

~~The District shall offer both parties an appeal from a determination regarding responsibility, and from the District's dismissal of a formal complaint or any allegations therein, on the following bases:~~

- ~~Procedural irregularity that affected the outcome of the matter;~~
- ~~New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and~~
- ~~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 the individual complainant or respondent that affected the outcome of the matter.~~

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

Timelines (following the procedures found in ACA-RA)

~~The discrimination report or a formal complaint must be filed within thirty (30) calendar days after the complaining party knew or should have known that there were grounds for a complaint/grievance.~~

~~Once the grievance report has been received, the grievance form provided by the District is to be completed within one (1) working day, if possible. The Title IX Coordinator shall require the immediate supervisor or site administrator to investigate and respond in writing to the complaining party within ten (10) working days of obtaining the information in the form ACA-E, so far as was possible.~~

~~If the complainant is not satisfied with the actions taken by the administration as indicated in the response and efforts to alleviate the discrimination alleged, the complainant will have ten (10) days within which to submit a written objection, including a statement of the reason for their objection, to the Superintendent.~~

~~The Superintendent will have ten (10) additional working days to respond in writing to the complaining party regarding the objection.~~

~~If the complainant or respondent is not satisfied with the Superintendent's response and efforts to alleviate the discrimination alleged, establish responsibility or dismiss any allegations, the complainant or respondent will have ten (10) days within which to submit a written objection to the Board based on one of the following:~~

- ~~• Procedural irregularity that affected the outcome of the matter;~~
- ~~• New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and~~
- ~~• 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 the individual complainant or respondent that affected the outcome of the matter.~~

~~The Board will then review the record of the investigation and have thirty (30) days to respond to the complaining party in writing.~~

Extension or Delay request

~~Either the person who reported or the District may request a temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action.~~

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

EXHIBIT

EXHIBIT

**NONDISCRIMINATION ON THE
BASIS OF SEX**

GRIEVANCE COMPLAINT FORM

~~(To be filed with the Title IX compliance officer as provided in ACA-R)~~

(Note: This form is not required in order to make a complaint of Title IX sex discrimination. A complaint may be oral or written and it will trigger the Title IX grievance process if it objectively can be understood as a request for the district to investigate and make a determination about alleged sex discrimination under Title IX. To make an oral complaint, please contact the Title IX coordinator.)

Please print:

Name: _____ Date: _____

Address: _____

Telephone: _____ Secondary Phone: _____

Best time to be reached: _____

E-mail address: _____

I wish to complain against:

Name of person, school (department), program, or activity:

Address: _____

Specify your complaint by stating the problem as you see it. Describe the incident, the participants, the background to the incident, and any attempts you have made to solve the problem. Be sure to note relevant dates, times, and places.

Date of the action against which you are complaining: _____

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

If there is anyone who could provide more information regarding this, please list name(s), address(es), and telephone number(s).

Name Address Telephone Number

The projected solution

Indicate what you think can and should be done to solve the problem. Be as specific as possible.

I certify that this information is correct to the best of my knowledge.

Signature of Complainant

The compliance officer, as designated in ACA, shall give one (1) copy to the complainant and shall retain one (1) copy for the file.

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EXHIBIT**EXHIBIT**

**NONDISCRIMINATION ON THE
BASIS OF SEX**

NOTICE OF NONDISCRIMINATION

The District does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its regulations, including in admission and employment.

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, or both. The District's Title IX Coordinator is:

Name:

Office address:

E-mail address:

Telephone number:

The District's nondiscrimination policy and grievance procedures can be located at *[include link to location(s) on website or otherwise describe location(s)].*

To report information about conduct that may constitute sex discrimination or make a complaint of sex discrimination under Title IX, please refer to *[include link to location(s) on website or otherwise describe location(s)].*

**[ONLY IF THE DISTRICT DESIGNATES "CONFIDENTIAL EMPLOYEES,"
INCLUDE THE FOLLOWING PROVISION:]**

Students or employees may choose to discuss incidents with a confidential resource like the one(s) listed below. A conversation or contact with a confidential employee will not generally result in a report to the District but the confidential employee may have mandatory reporting obligations.

- *[List any confidential employee(s) or office(s) and provide contact information.]***

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

ADVISORY 248

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

~~**NONDISCRIMINATION RELATED TO REPRODUCTIVE
OR GENDER AFFIRMING HEALTH CARE**~~

~~Neither a public body nor a person or entity acting on behalf of or within the scope of authority of a public body shall discriminate against or interfere with a person's rights or ability to access or provide reproductive or gender-affirming health care within the recognized medical standard of care.~~

~~*Adopted:* — date of manual adoption~~

~~LEGAL REF.: — Laws of New Mexico 2023, Chapter 11~~

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

ADVISORY 249

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

~~**HUMAN RIGHTS ACT PROTECTION
GENDER OR GENDER IDENTITY**~~

~~The New Mexico Human Rights Act provides that a governmental entity (which includes local school boards) may not refuse or otherwise limit or place conditions on services provided to a person because of gender or gender identity (among other listed conditions).~~

~~*Adopted:* — date of manual adoption~~

~~LEGAL REF.: — NMSA 1978 Section 28-1-7M
— [Laws of New Mexico 2023, Ch. 29]~~

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

ADVISORY 250

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

EQUAL EMPLOYMENT OPPORTUNITY

~~Discrimination against an otherwise qualified individual with a disability or any individual by reason of race, color, religion, sex, sexual orientation, age, or national origin is prohibited. Efforts will be made in recruitment and employment to ensure equal opportunity in employment for all qualified persons. Pursuant to the New Mexico Human Rights Act, it shall be considered an unlawful discriminatory practice for an employer~~ It shall be prohibited for the District, unless based on a bona fide occupational qualification or other statutory prohibition, to refuse to hire, to discharge, to promote or demote or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, gender-affirming health care, pregnancy, childbirth or condition related to pregnancy or childbirth or reproductive health care, physical or mental handicap disability or serious medical condition, or military status, or, if the employer District has fifty (50) or more employees, spousal affiliation; provided, however, that 29 U.S.C. Section 631(e)(1) and (2) shall apply to discrimination based on age. The foregoing is intended to protect the employees or prospective employees in the manner required by applicable state and federal laws. Efforts will be made in recruitment and employment to ensure equal opportunity in employment for all qualified persons.

All reports or complaints regarding discrimination in employment other than those regarding discrimination on the basis of sex should be directed to the Superintendent's office of compliance as set forth in Policy AC and AC-R. All complaints or reports of discrimination on the basis of sex (i.e., Title IX complaints), which includes sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, gender identity, and sex-based harassment, shall be directed to the Title IX Coordinator per Policy ACA and its related regulations.

Adopted: date of manual adoption

LEGAL REF.: 28-1-2 NMSA *et seq.*
28-1-7A NMSA 1978
20 U.S.C. 1703, Equal Employment Opportunity Act of 1972

CROSS REF.: AC - Nondiscrimination
ACA - Nondiscrimination on the Basis of Sex
IHBA - Special Instructional Programs and
Accommodations for Disabled Students
JB - Equal Educational Opportunities
KED - Public Concerns/Complaints about Facilities or
Services

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

REGULATION**REGULATION****~~EQUAL EMPLOYMENT OPPORTUNITY~~****~~Compliance Officer~~**

~~The Superintendent shall be the compliance officer. Any person who feels unlawfully discriminated against or to have been the victim of unlawful discrimination by an agent or employee of the District or who knows of such discrimination against another person should file a complaint with the Superintendent. If the Superintendent is the one alleged to have unlawfully discriminated, the complaint shall be filed with the President of the Board.~~

~~Complaint Procedure~~

~~The District is committed to investigating each complaint and to taking appropriate action on all confirmed violations of policy. The Superintendent shall investigate and document complaints filed pursuant to this regulation as soon as reasonable. In investigating the complaint, the Superintendent will maintain confidentiality to the extent reasonably possible. The Superintendent shall also investigate incidents of policy violation that are raised by the Board, even though no complaint has been made.~~

~~If after the initial investigation the Superintendent has reason to believe that a violation of policy has occurred, the Superintendent shall determine whether or not to hold an administrative hearing and/or to recommend bringing the matter before the Board.~~

~~If the person alleged to have violated policy is a teacher or an administrator, the due process provisions of the District's Policy GCQF shall apply, except that the supervising administrator may be assigned to conduct the hearing. In cases of serious misconduct, dismissal or suspension proceedings in accordance with statutes may be initiated.~~

~~If the person alleged to have violated policy is a support staff employee, the Superintendent may follow due process and impose discipline under Policy GDQD if the evidence so warrants. The Superintendent also may recommend a suspension without pay, recommend dismissal, or impose other appropriate discipline.~~

~~If the person alleged to have violated policy is a student, the Superintendent may impose discipline in accordance with Policies JK and JKD.~~

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

~~If the Superintendent's investigation reveals no reasonable cause to believe policy has been violated, the Superintendent shall so inform the complaining party in writing.~~

Timelines

~~The complaint must be filed within thirty (30) calendar days after the complaining party knew or should have known that there were grounds for a complaint/grievance.~~

~~Once the written complaint has been filed using the forms provided by the District, the Superintendent shall require the immediate supervisor or site administrator to investigate and respond in writing to the complaining party within five (5) working days.~~

~~If the immediate supervisor or site administrator does not respond, the Superintendent will have ten (10) additional working days to respond in writing to the complaining party.~~

~~If the Superintendent does not respond within the established time, then the complaining party may request in writing that the issue be brought before the Board. The Board will then review the record of the investigation and have thirty (30) days to respond to the complaining party in writing.~~

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

EXHIBIT

EXHIBIT

EQUAL EMPLOYMENT OPPORTUNITY

GRIEVANCE COMPLAINT FORM

(To be filed with the Title IX compliance officer as provided in GBA-R)

Please print:

Name: _____ Date: _____

Address: _____

Telephone: _____ Secondary Phone: _____

Best time to be reached: _____

E-mail address: _____

I wish to complain against:

Name of person, school (department), program, or activity:

Address: _____

Specify your complaint by stating the problem as you see it. Describe the incident, the participants, the background to the incident, and any attempts you have made to solve the problem. Be sure to note relevant dates, times, and places.

Date of the action against which you are complaining: _____

ADVISORY 251

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

PROGRAMS FOR PREGNANT / PARENTING STUDENTS

Pregnant and parenting students should have the same educational opportunities as their peers. Such students may also need additional counseling and health services that are available through the public schools.

Pregnant students may elect to remain in the regular school program and shall not be involuntarily excluded from any part of the school program, provided, however, that reasonable safeguards are maintained both for the school's and the student's best interests.

Pregnant students shall notify school authorities of their status as soon as it is ascertained. At least ten (10) days of medical absence may be approved for a student who provides documentation of the birth of the student's child and time shall be provided for the student to make up the work.

Pregnant and parenting students of children under thirteen (13) shall be permitted four (4) days of excused absences for a child needing care upon proper documentation in accord with policy and statute. Time shall be provided for the student to make up the schoolwork missed during the absence. The Superintendent will establish procedures as necessary to implement this policy.

Parenting students shall not bring their children to school during the regular school day. Student's children will only be permitted in specified classes when requested by an instructor with the approval of the building administration. They are not to be in any other area of the school campus.

Adopted: date of manual adoption

LEGAL REF.: 22-12A-9 NMSA

34 CFR Part 106, Nondiscrimination on the basis of Sex in
Education

CROSS REF.: ACA – Nondiscrimination on the Basis of Sex

AD - Educational Philosophy/School District Mission

IHBF - Homebound Instruction

IKEA - Make Up Opportunities

JIE - Pregnant/Parenting Student

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

ADVISORY 252

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

EQUAL EDUCATIONAL OPPORTUNITIES

Except as provided by law, the right of a student to participate fully in classroom instruction the District's programs or activities shall not be abridged or impaired because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, gender-affirming health care, pregnancy, childbirth or condition related to pregnancy or childbirth or reproductive health care, physical or mental disability or serious medical condition, military status, or spousal affiliation, race, color, religion, sex, sexual orientation, age, national origin, and disability, or any other reason not related to the student's individual capabilities.

Except as provided by law or other policy, the right of students to participate in extracurricular activities shall be dependent only upon their maintaining the minimum academic and behavioral standards established by the Board, and their individual ability in the extracurricular activity.

The foregoing is intended to apply to students in the manner required by applicable state and federal laws.

All reports or complaints regarding discrimination by or against students other than those regarding discrimination on the basis of sex should be directed to the Superintendent's office of compliance as set forth in Policy AC and Regulation AC-R. All complaints or reports of discrimination on the basis of sex (i.e., Title IX complaints), which includes sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, gender identity, and sex-based harassment, shall be directed to the Title IX Coordinator per Policy ACA and its related regulations.

Adopted: date of manual adoption

LEGAL REF.: 28-1-2 NMSA *et seq.*
 20 U.S.C. 1400 *et seq.*, Individuals with Disabilities
 Education Act
 20 U.S.C. 1681, Education Amendments of 1972, Title IX
 20 U.S.C. 1703, Equal Educational Opportunities Act
 29 U.S.C. 794, Rehabilitation Act of 1973, (Section 504)
 42 U.S.C. 2000, Civil Rights Act of 1964, as amended in 1972,
 Title VI, Title VII
 42 U.S.C. 11301, McKinney-Vento Homeless Assistance
 Act of 2001, as amended by the Every Student
 Succeeds Act (ESSA) of 2015

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

CROSS REF.: AC - Nondiscrimination
ACA - Nondiscrimination on the Basis of Sex
GBA - Equal Employment Opportunity
GCQF - Discipline, Suspension, Termination and Discharge
of Professional Staff Members
GDQD - Discipline, Suspension, Termination and Discharge
of Support Staff Members
IHBA - Special Educational Programs and
Accommodations for Disabled Students
JII - Student Concerns, Complaints, and Grievances
JK - Student Discipline
JKD - Student Suspension/Expulsion
KED - Public Concerns/Complaints about Facilities or
Services

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

REGULATION

REGULATION

**EQUAL EDUCATIONAL
OPPORTUNITIES****Compliance Officer**

The Superintendent shall be the compliance officer. Any person who feels unlawfully discriminated against or to have been the victim of unlawful discrimination by an agent or employee of the District or who knows of such discrimination against another person should file a complaint with the Superintendent. If the Superintendent is the one alleged to have unlawfully discriminated, the complaint shall be filed with the President of the Board.

Complaint Procedure

The District is committed to investigating each complaint and to taking appropriate action on all confirmed violations of policy. The Superintendent shall investigate and document complaints filed pursuant to this regulation as soon as reasonable. In investigating the complaint, the Superintendent will maintain confidentiality to the extent reasonably possible. The Superintendent shall also investigate incidents of policy violation that are raised by the Board, even though no complaint has been made.

If after the initial investigation the Superintendent has reason to believe that a violation of policy has occurred, the Superintendent shall determine whether or not to hold an administrative hearing and/or to recommend bringing the matter before the Board.

If the person alleged to have violated policy is a teacher or an administrator, the due process provisions of the District's Policy GCQF shall apply, except that the supervising administrator may be assigned to conduct the hearing.

If the person alleged to have violated policy is a support staff employee, the Superintendent may follow due process and impose discipline under Policy GDQD if the evidence so warrants. The Superintendent also may recommend a suspension, recommend dismissal, or impose other appropriate discipline.

If the person alleged to have violated policy is a student, the Superintendent may impose discipline in accordance with Policies JK and JKD.

If the Superintendent's investigation reveals no reasonable cause to believe policy has been violated, the Superintendent shall so inform the complaining party in writing.

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

Timelines

~~The complaint must be filed within thirty (30) calendar days after the complaining party knew or should have known that there were grounds for a complaint/grievance.~~

~~Once the written complaint has been filed using the forms provided by the District, the Superintendent shall require the immediate supervisor or site administrator to investigate and respond in writing to the complaining party within five (5) working days.~~

~~If the immediate supervisor or site administrator does not respond, the Superintendent will have ten (10) additional working days to respond in writing to the complaining party.~~

~~If the Superintendent does not respond within the established time, then the complaining party may request in writing that the issue be brought before the Board. The Board will then review the record of the investigation and have thirty (30) days to respond to the complaining party in writing.~~

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

EXHIBIT

EXHIBIT

**EQUAL EDUCATIONAL
OPPORTUNITIES**

GRIEVANCE COMPLAINT FORM

(To be filed with the compliance officer as provided in JB-R)

Please print:

Name: _____ Date: _____

Address: _____

Telephone: _____ Secondary Phone: _____

Best time to be reached: _____

E-mail address: _____

I wish to complain against:

Name of person, school (department), program, or activity:

Address: _____

Specify your complaint by stating the problem as you see it. Describe the incident, the participants, the background to the incident, and any attempts you have made to solve the problem. Be sure to note relevant dates, times, and places.

Date of the action against which you are complaining: _____

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

ADVISORY 253

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

PREGNANT / PARENTING STUDENT

A pregnant or parenting student (parenting a child under thirteen [13] years of age) may be permitted excused absences for the pregnancy and for limited parenting purposes along with the opportunity to make-up work missed during the absence, provided the student communicates the pregnancy and parenting status to the appropriate school personnel.

- Ten (10) days of excused absences will be permitted for a student who provides documentation of the birth of the student's child and additional days of excused absence shall be permitted if deemed medically necessary by the student's physician for the pregnancy or care of the birthed child and reported to the school attendance office.
- Four (4) days per semester of excused absences, in addition to the number of allowed absences for all students (see cross referenced policies below) shall be permitted for students who provide appropriate documentation of pregnancy or that the student is the parent of a child under the age of thirteen (13) needing care.
- Additionally, the pregnant or parenting student shall be allowed at least a time period to make up the work the student missed that equals the number of days the student was absent.

The School District shall provide a copy of this policy to all students in middle, junior high and high schools in the system.

Adopted: date of manual adoption

LEGAL REF.: 22-12-2 NMSA (1978)
 22-12-3.1 NMSA (1978)
 22-12-8 NMSA (1978)
34 CFR Part 106, Nondiscrimination on the basis of Sex in
 Education

CROSS REF.: ACA – Nondiscrimination on the Basis of Sex
 IHBF - Homebound Instruction
 IKEA - Make Up Opportunities
 JE - Student Attendance
 JHB - Truancy/Chronic Absence

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

ADVISORY 254

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

MARRIED STUDENTS

Married students must report any name changes to their guidance counselors or the principal if school records are to reflect the married name on school transcripts. A student's marital status does not reduce the requirements or opportunities of the educational system in the District.

LEGAL REF.: 34 CFR Part 106, Nondiscrimination on the basis of Sex in Education

CROSS REF.: ACA – Nondiscrimination on the Basis of Sex

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

RELEVANT STATUTES AND CITATIONS

New Title IX regulations effective August 1, 2024

<https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

New Mexico Human Rights Act

<https://nmonesource.com/nmos/nmsa/en/item/4365/index.do>

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