

## **Title IX: Sexual Harassment Students and Other Applicable Individuals**

Title IX of the Education Amendments of 1972 and its implementing regulations in 34 C.F.R. Part 106 (collectively “Title IX”), and Wis. Stat. §118.13 and Wisconsin Administrative Code Ch. PI 9 (collectively “State Law”), prohibit discrimination, including harassment, on the basis of sex against students in an education program or activity. The Pecatonica Area School District (“District”) does not discriminate on the basis of sex in its education programs or activities, and it is required by Title IX not to discriminate in such a manner. The requirement not to discriminate in the District’s education programs and activities extends to admission and employment. Inquiries about the application of Title IX may be referred to the Title IX Coordinator or the Assistant Secretary for Civil Rights of the United States Department of Education, or both. Contact information for the Title IX Coordinator is provided below.

**This policy is only intended to address sexual harassment against students and other applicable individuals, other than employees, under Title IX.** All other forms of discrimination and harassment (including sexual harassment under State Law) against students or other applicable individuals, other than employees, based on sex, race, religion, national origin (including persons whose primary language is not English), ancestry, creed, pregnancy, marital or parental status, sexual orientation, gender expression, gender identity, gender non-conformity, physical, mental, emotional or learning disability are addressed in Policy 411.

Sexual harassment against employees under Title IX is addressed in Chapter 513.

### **I. Definition of Sexual Harassment under Title IX**

Sexual harassment under Title IX means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual’s participation in unwelcome sexual conduct;
- (2) Unwelcome conduct that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District’s education program or activity; or
- (3) Sexual assault, as defined in 20 U.S.C. § 1092(f)(6)(A)(v), dating violence, as defined in 34 U.S.C. § 12291(a)(10), domestic violence, as defined in 34 U.S.C. § 12291(a)(8), or stalking, as defined in 34 U.S.C. § 12291(a)(30).

### **II. Notice of Sexual Harassment under Title IX**

When the District has actual knowledge of sexual harassment under Title IX in an education program or activity of the District against an individual, including a student, in the United States, the District shall respond promptly in a manner that is not deliberately indifferent.

“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment under Title IX to (1) the District’s Title IX Coordinator; (2) any official of the District who has authority to institute corrective measures on behalf of the District; or (3) any employee of the District.

“Education program or activity” includes locations, events, or circumstances over which the recipient exercised substantial control over both the individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX and the context in which the sexual harassment occurred.

### **III. Identification of Title IX Coordinators**

The District Administrator is designated as the “Title IX Coordinator” and authorized by the District to coordinate its efforts to comply with Title IX and this Policy. The contact information for the Title IX Coordinator is as follows:

Jill Underly, Superintendent  
Pecatonica Area School District  
704 Cross Street  
Blanchardville, WI 53516  
Phone:(608) 523-4248  
Email: [junderly@pecatonica.k12.wi.us](mailto:junderly@pecatonica.k12.wi.us)

### **IV. Reporting Sexual Harassment under Title IX**

Any employee or any official of the District who has authority to institute corrective measures with actual knowledge of sexual harassment under Title IX must immediately report sexual harassment to the Title IX Coordinator. In the event that the sexual harassment involves conduct by the Title IX Coordinator against a student, such employees or officials must report the alleged conduct to the District Administrator.

Any person (including a person not alleged to be the victim of sexual harassment) may report sexual harassment at any time, including during non-business hours, to the Title IX Coordinator by mail, by telephone, by electronic mail, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.

### **V. Response to Report of Sexual Harassment under Title IX**

When the District has actual knowledge of sexual harassment under Title IX, a complainant and respondent may be identified (collectively “parties”). A complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX. A respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX.

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 filing a formal complaint, and explain to the complainant the process for filing a formal complaint. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been

filed. Such measures are designed to restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party, while protecting the safety of all parties and the District's educational environment; and deterring sexual harassment.

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 other similar 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 of the District to provide the supportive measures.

#### **VI. Emergency Removal/Administrative Leave**

The District may remove a respondent from the education program or activity on an emergency basis. Before any emergency removal is permitted, the District shall (1) undertake an individualized safety and risk analysis, (2) determine that an immediate threat to the health or safety of students or other individual justifies removal, and (3) provide the respondent with notice and an opportunity to challenge the decision immediately following the removal. The District may place a non-student employee respondent on administrative leave, including during the pendency of a grievance process. The District shall also comply with any applicable requirements under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Individuals with Disabilities Education Act when removing a respondent from the education program or activity or placing a respondent on administrative leave.

#### **VII. Formal Complaint**

A formal complaint is a document filed by a complainant, or filed by a parent or guardian on behalf of a complainant, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent and requesting the District investigate the allegation of sexual harassment. At the time a formal complaint is filed (either by the complainant, parent or guardian, or the Title IX Coordinator), the named complainant must be participating in or attempting to participate in the education program or activity of the District.

A formal complaint may be filed with the Title IX Coordinator in person, by mail, by electronic mail, by using the contact information for the Title IX Coordinator, or by any additional method designated by the District. A document filed by a complainant means a document or electronic submission that contains the complainant's physical or digital signature or otherwise indicates that the complainant, or a parent or guardian acting on behalf of a complainant, is the person filing the formal complaint. If the District receives a formal complaint, the District must follow the grievance process below.

#### **VIII. Grievance Process**

The District's grievance process shall include all the basic requirements under Title IX. Any individual designated by the District as a Title IX Coordinator, investigator, decision-maker, appeal-decision maker, or facilitator of an informal resolution shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. In addition, there shall be a presumption that the respondent is not responsible for the

alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

#### **A. Written Notice**

Upon receiving a formal complaint, the District shall provide a written notice to the parties who are known. The written notice shall be provided to the parties within forty-five (45) days of receipt of the formal complaint.

The written notice shall include:

1. Notice of the District's grievance process, including any informal resolution process;
2. Notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time of the notice (identities of the parties involved in the incident, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident);
3. 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;
4. A statement that the parties may request to inspect and review evidence that is directly related to the allegations raised in the formal complaint;
5. A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney; and
6. Notice to 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.

The notice described above shall be provided to the parties with sufficient time to prepare a response before any initial interview. If, during an investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the notice, the District shall provide notice of the additional allegations to the parties whose identities are known.

#### **B. Dismissal of Formal Complaint**

If the conduct alleged in a formal complaint: (1) would not constitute sexual harassment as defined under Title IX even if proved; (2) did not occur within the District's program or activity; or (3) did not occur against a person in the United States, the District **must** dismiss the formal complaint with regard to that conduct. If dismissal is required, the District must promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties. Dismissal of a formal complaint does not preclude action under the District's code of conduct.

The District **may** dismiss a formal complaint if, at any time during the investigation, any of the following occurs: (1) the complainant notifies the Title IX Coordinator in writing that the

complainant would like to withdraw the formal complaint; (2) the respondent is no longer enrolled in or employed by the District; or (3) specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint. If such dismissal occurs, the District must promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties. If dismissed, the District will review whether the complaint should be investigated under other applicable policies.

### **C. Consolidation**

The District may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, where the allegations of sexual harassment arise out of the same facts or circumstances.

### **D. Informal Resolution**

Following the filing of a formal complaint, and at any time prior to reaching a determination regarding responsibility, the District may facilitate an informal resolution process, including mediation, which does not involve a full investigation and adjudication. An informal resolution process is not available to resolve allegations that an employee sexually harassed a student, and the District shall 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 under Title IX. The District shall not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed.

Before conducting any informal resolution process, the District will provide to the parties a written notice disclosing: (1) the allegations; (2) 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, if any; (3) that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the formal complaint process; and, (4) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared and whether the facilitator of the informal resolution process may be a witness in any subsequent formal complaint process. The District will obtain the parties' voluntary written consent to the informal resolution process. Any such informal resolution process shall be resolved within thirty (30) days of the written notice described in this paragraph, unless additional time is needed as determined by the District.

### **E. Investigation of Formal Complaint**

The District shall designate an investigator to investigate the allegations in a formal complaint and ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the District and not on the parties. The investigation process instituted by the District shall 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 a grievance process that complies with Title IX before imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

During the investigation, the District shall:

1. Not restrict the ability of either party to gather and present relevant evidence, or to discuss the allegations under investigation;
2. Provide equal opportunity for the parties to present witnesses and other inculpatory and exculpatory evidence;
3. Provide the parties with the same opportunities to have others present during any complaint 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. 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;
4. Provide to the party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
5. 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 evidence upon which the District does not intend to rely in reaching a determination regarding responsibility, as well as inculpatory and 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;
6. 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, and 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;
7. Create an investigative report that fairly summarizes relevant evidence and, at least ten (10) days prior to the time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or hard copy, for their review and written response; and,
8. 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.

**F. Determination Regarding Responsibility**

The District shall identify a decision-maker (other than the Title IX Coordinator, investigator, and facilitator of an informal resolution) who will issue a written determination regarding responsibility on the formal complaint. To reach this determination, the decision-maker will apply the preponderance of the evidence standard.

After receipt of the investigative report and before reaching a determination regarding responsibility, the 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.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such evidence about the complainant's prior sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is offered to prove consent. The decision-maker must explain to the party proposing the questions any decision to exclude questions as not relevant.

The decision-maker must make an objective evaluation of all relevant evidence (both inculpatory and exculpatory) and must not make credibility determinations based on a person's status as a complainant, respondent, or witness.

#### **G. Decision-maker's Written Determination**

The decision-maker will apply a preponderance of the evidence standard in issuing a written determination. The written determination shall include all of the following:

1. Identification of the allegation(s) potentially constituting sexual harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the District's code of conduct to the facts;
5. 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 access to the District's education program or activity will be provided by the District to the complainant; and,
6. The District's procedures and permissible bases for the complainant and respondent to appeal, including notice of the right of a student complainant to appeal a final determination to the state superintendent of public instruction and procedures for making that appeal.

The District will 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.

## **H. Possible Sanctions and Remedies**

The District may implement a range of possible sanctions and remedies following a determination of responsibility. The range of remedies include counseling, no-contact orders, or other appropriate remedies. The range of sanctions include suspension, expulsion, or other disciplinary sanctions.

## **I. Supportive Measures**

The District may provide a range of supportive measures available to complainants and respondents. The range of supportive measures include those identified above.

## **J. Appeal**

The District shall identify an individual to serve as a decision-maker on the appeal (other than the Title IX Coordinator, investigator, decision-maker, and facilitator of an informal resolution).

The District shall offer both parties an appeal from a determination regarding responsibility or from a dismissal of a formal complaint. An appeal must be filed within ten (10) days of issuance of the written determination on responsibility or dismissal of a formal complaint and may be based upon any of the following:

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

As to all appeals, the District shall:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the appeal decision-maker is not the same person as any investigator(s), decision-maker(s) that reached the determination of responsibility or dismissal, the Title IX Coordinator, or the facilitator of an informal resolution;
3. Ensure that the appeal decision-maker complies with the standards set forth in 34 C.F.R. § 106.45(b)(1)(iii);
4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
5. Issue a written decision describing the result of the appeal and the rationale for the result, which shall be issued within thirty (30) days of the filing of the appeal, unless the appeal decision-maker needs additional time; and,



6. Provide the written decision on appeal simultaneously to both parties.

#### **K. Timeframe for Determination**

The conclusion of the grievance process, including any appeal, shall be done in a reasonably prompt timeframe, but no more than ninety (90) days from the date the complaint is received. The parties may agree to an extension of the 90-day timeframe to complete the grievance process or extend this timeline for good cause, as permissible by law.

#### **IX. Retaliation Prohibited**

Neither the District nor any person may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the individual has made a report or complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Policy.

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 complaint 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.

Complaints alleging retaliation may be filed according to the complaint procedures for sexual harassment under this Policy.

#### **X. Confidentiality**

The District shall keep confidential the identity of any person who has made a report or complaint of sexual harassment under Title IX, any complainant, any individual who has been reported to be the perpetrator of sexual harassment, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (“FERPA”), as required by law, or to carry out the purposes of this Policy or Title IX, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

The District may not 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 and which are made and maintained in connection with the provision of treatment to the party, unless the District obtains the voluntary written consent of the party or the party’s parent or guardian.

#### **XI. Recordkeeping**

The District shall maintain for a period of seven years, records of:

1. Each sexual harassment investigation, including any determination regarding responsibility, any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve access to the District’s education program or activity;
2. Any appeal and the result therefrom;

3. Informal resolution and the result therefrom; and
4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process with regard to sexual harassment.

The District shall create and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.

With respect to each response, the District shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it took measures designed to restore or preserve access to the District's educational program or activity. The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken.

## **XII. Training**

The District shall ensure that the Title IX Coordinators, investigators, decision-makers, appeal decision-makers and facilitators of informal resolution processes, receive training on the definition of sexual harassment, the scope of the District's education program or activity, how to conduct an investigation and grievance process including appeals and informal resolution processes, if applicable, for the purpose of protecting the safety of students, ensuring due process protections for all parties, and promoting accountability.

The District shall ensure decision-makers receive training on issues of relevance of questions and evidence, including questions and evidence about a complainant's prior sexual behavior. The District shall also ensure investigators receive training on how to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train Title IX Coordinators, investigators, decision-makers, and facilitators of informal resolutions may not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

## **XIII. Pupil Harassment under State Law**

Under state law, pupil harassment includes behavior towards pupils based, in whole or in part, on sex, which substantially interferes with a pupil's school performance or creates an intimidating, hostile, or offensive school environment. Any such pupil harassment may be reported to the Title IX Coordinator. The Title IX Coordinator shall be responsible for addressing such allegations, including conducting an investigation, if appropriate, pursuant to this Policy and Policy 411.

If a student, or parent or guardian acting on behalf of the student, files a complaint alleging harassment on the basis of sex only under state law, the Title IX Coordinator shall consider any appropriate action, including requiring the student to follow any general student harassment procedure adopted to comply with state law prohibiting harassment based on sex. However, the Title IX Coordinator may determine that it is appropriate to proceed with the complaint under this Title IX Sexual Harassment policy, including resolution of the allegations under the grievance process.

Legal References: Title IX of the Education Amendment of 1972  
Title IX regulations, 34 C.F.R. Part 106  
Wis. Stat. §118.13  
Wisconsin Administrative Code PI 9

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9/8/2020 Jill Underly and Paul Manriquez were trained by Attorneys in Boardman and Clark in Title IX Policies and Procedures.