

Policy 226.1 – Title IX Sexual Harassment Policy

New policy effective upon passage

<i>1st reading</i>	August 13, 2020
<i>2nd reading</i>	August 27, 2020
<i>3rd reading and Adoption</i>	September 10, 2020

Statutory authority Title IX Educational Amendments of 1972, 34 CFR Part 106 and the Clery Act, 20 U.S.C. 1092

Administrative Guidelines

(none)

Title IX of the Education Amendments of 1972 prohibits sex discrimination in all educational programs and activities receiving Federal financial assistance. This policy, then, covers sexual harassment by or to a student, by or to an employee, and/or by or to a visitor to an RCBOE facility and in any combination of gender, sex, or orientation.

Definitions

The following definitions shall apply under this policy:

Actual Knowledge – notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any RCBOE official who has authority to institute corrective measures on behalf of RCBOE or to any school employee

Advisor – a parent, guardian, or any person chosen by the Complainant or the Respondent to represent them and their interest throughout the grievance procedure

Complainant – an individual who is alleged to be the victim of conduct that could constitute sexual harassment

Dating Violence – violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with victim. The existence of such a relationship shall be determined based on the reporting party's statement with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Decision Maker – the Superintendent

Deliberate Indifference – the conscious or reckless disregard of the consequences of one's acts or omissions. Deliberate indifference is more than negligence.

Disparate Treatment Based on Gender – any difference in treatment based on gender unless there is a legitimate nondiscriminatory reason for the difference in treatment

Domestic Violence – felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim

Education Program or Activity – locations, events, or circumstances over which RCBOE exercised substantial control over both the respondent and the context in which the sexual harassment occurs

Exculpatory Evidence – evidence that shows a person non-involvement in an act or evidence that can show innocence

Formal Complaint – a document filed by a Complainant or parent on their behalf or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting an investigation of the allegation of sexual harassment

Inculpatory Evidence - evidence that shows a person's involvement in an act or evidence that can show guilt

Informal Resolution Process - an alternative to a full investigation and adjudication of a formal complaint that can happen with the voluntary consent of both the complainant and respondent where the allegation does not involve an employee sexually harassing a student

Preponderance of the Evidence - the evidence shows that the action alleged is more probable to have occurred than to not have occurred

Respondent - an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

Sex Discrimination - when a person, because of his or her sex, is denied participation in or the benefits of any education program or activity receiving federal financial assistance. Sex discrimination includes, but is not limited to, disparate treatment based on gender, sexual harassment, sexual violence and sexual assault

Sexual Assault - means any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. This includes rape, fondling, incest, and statutory rape

Sexual Harassment - conduct based on sex that satisfies one or more of the following:

Quid pro quo - conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity; or

Sexual assault, dating violence, domestic violence, or stalking, as defined in law and in this policy.

Stalking - engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

Supportive Measures - 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 education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or deter sexual harassment.

Title IX Coordinator – The Director of Student Support Services shall serve as this Board's Title IX Coordinator.

Title IX Team – the Title IX Coordinator; school-based Title IX representatives; school administrators and counselors; and the Superintendent.

Any person may report sexual discrimination or sexual harassment, regardless of whether or not the person reporting is the person alleged to be the victim of the conduct) 24 hours a day by contacting the Title IX Coordinator in the following ways:

By mail: 813 Capitol Street, Spencer, WV 25276

By phone: (304) 927-6400

Or by reporting to any school employee.

Employee Expectations and Duties

Each employee shall be responsible to maintain learning and working environment free from all forms of unlawful discrimination and harassment, and to report all incidents of unlawful discrimination or harassment promptly in a manner that is not deliberately indifferent, which he/she observes or is informed about to the building principal, school based Title IX representative, or the Title IX coordinator.

Employees are strictly prohibited from dating, attempting to cultivate a romantic relationship or becoming involved in an inappropriate relationship with students, regardless of the student's age or consent. This prohibition shall be in force as long as the student is considered a student within the school system, including during the summer break, holidays and other times away from school, and also shall apply to all graduated students for 12 months after the student's graduation per WV Code 18A-2-8 and 18A-3-6.

Title IX Coordinator Expectations and Duties

The Title IX Coordinator shall publish and disseminate a notice of this policy and complaint procedure at least annually to students, parents/guardians, employees, and the public, together with either a copy of this policy or a statement how to obtain a copy of this policy. A copy of this policy will be distributed to all buildings and facilities within the County, and included or referenced in all student or employee handbooks and posted on the Board's website.

The Title IX Coordinator, together with other appropriate Board officials, are responsible to help monitor the implementation of nondiscrimination procedures in the following areas:

- 1) Curriculum and Materials – Review of curriculum guides, textbooks and supplemental materials for discriminatory bias.
- 2) Training – Provision of training for students and staff to identify and alleviate problems of discrimination and unlawful harassment. Provision of training to all building principals to investigate complaints under this policy.
- 3) Student Access – Review of programs, activities, and practices to ensure that all students have equal access and are not segregated except when permissible by law or regulation.
- 4) County Support – Assurance that like aspects of the school program receive like support as to staffing and compensation, facilities, equipment, and related matters.
- 5) Student Evaluation – Review of tests, procedures, and guidance and counseling materials for stereotyping and discrimination.
- 6) Employment Relations - Development of position qualifications, job descriptions and essential job functions; Recruitment materials and practices; Procedures for screening, interviewing and hiring; Promotions; and Disciplinary actions, up to and including terminations.

The Title IX Coordinator shall be responsible for:

- 1) the administration of the reporting and complaint procedures provided in this policy.
- 2) providing notices to all parties, as required, during the Formal Complaint process outlined in this policy.
Notices shall include:
 - i. Details of the allegations, parties involved, date, location of alleged conduct, and that the Respondent is not presumed responsible until a determination regarding responsibility is made at the conclusion of the grievance process.
 - ii. That the recipient of the notice may have an advisor if they choose during this process.
 - iii. A request for a meeting with the parties and advisors if they have one, to discuss the allegations.
 - iv. Date, time, location, participants, and purpose with sufficient time to prepare to participate.
 - v. Information about the Informal Resolution Process, including requirements of the process; records kept and shared; the consequences resulting from participating in the process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations after the resolution is agreed to; and the right to withdraw from the process and resume the grievance process.

The Title IX Coordinator must treat Complainants and Respondents equitably by offering supportive measures to a Complainant, and by following a grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a Respondent.

Student Responsibilities

Each student shall be responsible to respect the rights of their fellow students and Board employees and to ensure an environment free from all forms of unlawful discrimination and harassment, and to report all incidents of unlawful discrimination or harassment which they observe, or are informed about, to any school employee or to a member of the Title IX Team.

Policy for Reporting Violations

Any school employee who suspects or is notified that a student has been subject to conduct that constitutes unlawful sex discrimination, including sexual harassment, shall report the incident to the building principal as soon as possible, but not later than twenty-four hours unless extenuating circumstances justify a reasonable extension of that deadline. If it is not possible to contact the building principal in a timely fashion, the school employee shall report the incident to the Title IX Coordinator or another administrator as soon as possible.

If a school employee is the subject of the complaint of sexual harassment the conduct should be reported directly to the Principal, Superintendent, and/or the Title IX Coordinator. If the Title IX Coordinator is also a subject of the complaint or otherwise not impartial, the report shall be made to another administrator or the Superintendent.

All Complaints of sexual harassment should be made in writing on the appropriate form provided for under the Complaint Procedure in this policy to the Title IX Team. If the incident was initially reported orally, then the Title IX team member shall inform the student of the right to file a complaint and shall promptly provide all necessary forms and assistance to enable the complainant to file an appropriate written complaint if they so desire. If the complaint that is reported, regardless of whether it is orally reported or written, is of the nature that requires reporting as a mandatory reporter, the person to whom the oral or written complaint was given shall make a formal complaint and report it to the appropriate authorities themselves regardless of student desires within 24 hours per WV Code 49-2-803.

Procedures for Reporting Complaints

Any Board employee with actual knowledge of sexual harassment in an education program or activity must report the sexual harassment to a member of the Title IX Team, as defined in this policy. The contacted member of the Title IX Team will then convey the Complaint to either the school-based Title IX representative or the Title IX Coordinator.

The school-based Title IX representative or the Title IX Coordinator shall promptly contact the alleged victim of the sexual harassment and discuss the following:

- 1) Supportive measures available to immediately relieve any ongoing issues and the alleged victim's wishes with respect to supportive measures,
- 2) The availability of supportive measures with or without the filing of a formal complaint, and
- 3) The process for filing the formal complaint.

The school-based Title IX representative or the Title IX Coordinator shall document that conversation and the allegations on the Board's form provided for this purpose and inform the Complainant's parent or guardian of the possible complaint.

Based on the allegation, the Title IX Team member handling the Complaint will determine if there was a possible instance of sexual harassment, at which point the Complainant/Complainant's parents or guardian may decide to pursue a formal investigation. The Title IX Team member can also decide to pursue a formal complaint regardless of Complainant/Complainant's parents or guardian's consent if the circumstances are such that it would not be unreasonable to pursue without consent.

If after talking to the Complainant and filling out the provided form the Title IX Team member handling the complaint determines there was not a possible instance of sexual harassment as defined, the complaint may be handled by applying other Board policy violations. The Title IX Team member shall report to the principal the non-sexual harassment findings for the Principal to handle from a disciplinary aspect.

Procedures for the Formal Complaint Process

Filing the Formal Complaint

At the outset of filing the Formal Complaint the Title IX Team Member handling the Complaint shall contact the Complainant's parent or guardian and inform them of the Complaint. The Complainant, parents, and/or guardian shall be told that they may be accompanied by an advisor during all steps of the complaint procedure. If the Complainant is not a minor, then parent and guardian contact will be at the option of the Complainant provide the non-minor Complainant has capacity.

If the complaint possibly meets the definition of sexual harassment and either the student; student's parent or guardian; or the Title IX Coordinator wants to file a formal complaint the above-referenced form must be signed.

At the time of the filing of the Complaint, a copy of this policy shall be provided to the Complainant.

The Title IX Coordinator will start investigating under the formal complaint process using the above-referenced form.

Dismissal of a Formal Complaint

The formal complaint must be dismissed if:

- 1) the conduct doesn't constitute sexual harassment as defined,
- 2) it did not occur during education program or activity,
- 3) or did not occur in the US.

The formal complaint may be dismissed if:

- 1) the Title IX Coordinator is notified in writing by the complainant that they would like to withdraw the complaint/allegations;
- 2) respondent is no longer enrolled or employed by the Board;
- 3) or if there are specific circumstances that prevent the Board from gathering evidence sufficient to reach a determination.

Notice detailing dismissal will be sent to all parties.

Formal Complaint Investigation Process (Student to Student)

The Title IX Team Member or Title IX Coordinator will complete the above-referenced form. If a Title IX Team Member other than the Title IX Coordinator completes the form, the Team Member will then contact and send all forms completed to the Title IX Coordinator.

The Title IX Coordinator will review all forms and verify that the complaint falls under the definition of Sexual Harassment.

The Title IX Coordinator will offer any additional supportive measures to the Complainant and Respondent.

The Title IX Coordinator will send a notice that a formal complaint was filed to the Complainant, Respondent, and any identified witnesses.

The Title IX Coordinator will meet with Complainant, Respondent, and any witnesses to investigate the Complaint. The Title IX Coordinator will provide opportunity for all parties to present witnesses and any inculpatory or exculpatory evidence.

If needed the Title IX Coordinator will ask for written consent to access medical or counseling records.

The Title IX Coordinator will forward all the gathered evidence, that is not protected under any other law or regulation, to the parties electronically or in hard copy, even if not used to make a determination regarding responsibility. The parties will have ten calendar days to respond with a written response which the Title IX Coordinator will consider prior to completion of investigative report.

Title IX Coordinator will create an investigative report that summarizes relevant evidence and send that report to all parties, including advisors, in electronic or hard copy format. Parties may review and provide any written responses they may have within ten calendar days of receiving the investigative report.

After the Parties have had access to the Investigative Report for at least ten calendar days, the Title IX Coordinator will take all gathered evidence, the investigative report, and all responses to the report, to the decision maker, as defined, to reach a determination regarding responsibility.

Throughout this process, the Board cannot not restrict the ability of either party to discuss the allegations or to gather/present relevant evidence.

For all processes, timelines may be delayed for good cause.

Formal Complaint Decision Process (Student to Student)

After investigative report has been sent to all parties and before reaching a determination regarding responsibility, the Decision Maker must:

- 1) Afford each party the opportunity to submit written and relevant questions that a party wants to ask of any other party or witness involved in the allegations. The timeline for returning the questions to the Decision Maker will be determined by the Decision Maker and communicated in writing to the Parties.
- 2) Provide the questions to the relevant party or witness to answer in writing. The timeline for returning the answers to the Decision Maker will be determined by the Decision Maker and communicated in writing to the Parties at the time of receiving the questions.
- 3) Provide each party with the answers to all written questions.
- 4) Allow for additional limited follow up questions and answers from each party, as appropriate.
- 5) Explain why any question asked by a party was excluded should the Decision Maker decide to exclude a question.

The Decision Maker shall not consider the Complaint's prior sexual predisposition or sexual behavior unless such evidence is being offered to prove someone other than the Respondent committed the alleged conduct or help to prove consent.

After all questions and answers are received, the Decision Maker must issue a written determination regarding responsibility and must include in that determination, the following:

- 1) Identification of the allegations constituting sexual harassment and Board policy violation;
- 2) Description of procedural steps taken;
- 3) Finding of facts supporting the determination;
- 4) Conclusions regarding the application Policy 440 to the facts and the determination regarding the Respondent's responsibility based on the preponderance of the evidence;
- 5) Disciplinary sanctions possible per Policy 440 to be imposed on the Respondent, and if any additional supportive measures will be provided by the Board to the Complainant for any policy violation; and
- 6) The Board's procedures and bases for any party to appeal.

The written determination shall be provided to the parties simultaneously. The written determination becomes final either on the date that the Board provides the parties with the written determination of the result of an appeal, if there is an appeal filed; or if an appeal is not filed, on the date the appeal would no longer be timely.

Appeals from the Formal Complaint Process (Student to Student)

Both parties have a right to appeal a determination regarding responsibility, the dismissal of a formal complaint, or any allegations in the formal complaint on the following basis of:

- 1) Procedural irregularity;
- 2) New evidence;
- 3) Bias or conflict of interest against the Complainant or Respondent on the part of the Title IX Coordinator or the Decision Maker that affected the outcome of the matter; and/or
- 4) Any other reasonable basis for an appeal.

The appeal must be in writing and sent to the Superintendent.

Upon notice of the appeal from the Superintendent, the Title IX Coordination must notify the other party in writing of the appeal and ensure the decision-maker for the appeal is not same person that reached determination regarding responsibility or dismissal. The Title IX Coordinator will also ensure that all documentation related to the Complaint is given to the Appeal Decision Maker. For the purposes of this policy, the Title IX Coordinator is not limited to Board employees when identifying an appropriate Appeal Decision Maker and may make use of the Board's legal counsel, a properly trained individual contracted for this purpose, and/or a properly trained employee of another Board or of the State.

The Appeal Decision Maker will give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging the outcome of the written determination

The Appeal Decision Maker will issue a written decision describing the result of the appeal and rational for result simultaneously to both parties.

Student Disciplinary Corrective Action

If the written determination or appeal results in a finding that the Respondent committed a violation of Policy 440, Policy 540, or any laws or regulations applicable to the Respondent, corrective action shall rendered in accordance with KCS policies to ensure a substantial likelihood that such conduct ceases and will not recur, and to remedy any effects of the violation for which the Board is responsible.

Disciplinary actions and procedures shall be consistent with Policy 440, other Board policies and procedures, and other applicable state and federal laws, rules, regulations, and constitutional requirements.

Informal Resolution Policy and Procedure

An Informal Resolution Process may be facilitated at any time after the Formal Complaint is filed and prior to the determination regarding responsibility. This process takes the form of an informal mediation and does not involve a full investigation and adjudication.

An impartial Title IX team member shall be the mediator for this process. The Title IX team member who is the mediator shall not be anyone who was involved in the formal complaint process.

An informal resolution process is available to any Complainant who has filed a formal complaint, provided that the Respondent voluntarily agrees to the process with written consent.

This process is not available to resolve allegations that an employee sexually harassed a student.

Informal resolutions may not be required as a condition of enrollment/employment.

Formal Complaint Investigation Process (Involving Employees)

If the Superintendent believes there is reasonable evidence indicating the accused violated this policy at the outset of the formal complaint process, the Superintendent may remove the accused from the school setting and place them on

suspension during the pendency of any investigation and any disciplinary hearing. The accused may also be given an alternative assignment at an alternative site which does not involve the direct instruction or supervision of students.

The process previously outlined in this policy for investigating complaints also applies to matters involving employees except there will be no ability to formally respond to the report. Responses to the Investigation Report can be done directly with the Title IX Coordinator at any time or in the Disciplinary Hearing for the incident.

Regardless of whether the student is hesitant about continuing the investigation, or the accused retires or resigns during the pendency of the investigation, the investigation shall continue until concluded and a report submitted.

After review of the investigation report and while the employee is still potentially suspended, the Superintendent will determine if further investigation or a disciplinary hearing is necessary.

Formal Complaint Disciplinary Hearing (Involving Employees)

For employees who are being disciplined under this policy, Policy 544 shall apply.

If there is a student who is needed to testify at the disciplinary hearing due to the Title IX allegations, the student's parent or guardian will be notified by mail that the student will be needed to be present for testimony, and that the parents, guardians or other representative may be present during the time the student provides sworn testimony. In the event this occurs, such testimony shall, at the request of any party, be conducted virtually or by teleconference so that the child is not in the same room as the Board employee. The student or child shall testify under oath and shall be subject to examination and cross examination as in the same manner as any other hearing.

Recordkeeping

The Board must maintain all records of investigation under this policy for a period of seven years. The Board must also maintain all materials used to train Title IX Team members and make the materials available on its website and upon requested.

Confidentiality

The Board must keep confidential the identity of an individual who has made a report or complaint of sex discrimination or harassment, or any individual who has been reported to be the perpetrator of sex discrimination or harassment, and any witness except as to carry out the purposes of any investigation or proceeding.

Notwithstanding anything to the contrary in this policy, while a Complainant has the right to all documents in the investigation and the written determination, the disciplinary action shall not be disclose to a Complainant to the extent such disclosure is prohibited by the Family Educational Rights and Privacy Act (FERPA) or other applicable laws, regulations, rules, constitutional requirements, or orders.

Retaliation

No person shall, for the purpose of interfering with any right or privilege secured by Title IX, intimidate, threaten, coerce, or discriminate against any individual who is the victim of or who reports alleged sexual harassment or testifies, assists, or participates in an investigation, proceeding, or hearing related to a sexual harassment complaint. Should retaliation occur, they shall promptly report the actions to principal, Title IX Team member, or Title IX Coordinator. Persons found guilty of retaliation shall be subject to discipline.

Reporting to the WVDE

If the accused employee retires or resigns pending the investigation, following notice of a disciplinary hearing, or during the course of a disciplinary hearing, a letter advising that the employee did not conclude the disciplinary hearing will be sent to the West Virginia State Superintendent of Schools, accompanied by a copy of the disciplinary notice, and all evidence gathered. The letter sent to the West Virginia State Superintendent of Schools, the disciplinary notice, and report of allegations will be placed in the employee's personnel file. Such information shall remain in an employee's file

unless the Board is specifically ordered to remove such by an administrative body or court of competent jurisdiction such as the West Virginia Public Employees Grievance Board, Circuit Court, or West Virginia Supreme Court of Appeals.

The Superintendent will report any conviction of a felony, hearing determination or admission by the employee of “immorality” or “willful neglect of duty” to the State Superintendent of Schools.

Policy Training

This policy shall be reviewed annually by all Board employees.

The Board shall require each employee to annually attend at least one hour of training regarding the sexual harassment and its prevention.

The Board shall require at least one age appropriate instruction period regarding sexual harassment and its prevention to be taught annually.