

**Required**

**WASHINGTON CENTRAL UNIFIED  
UNION SCHOOL DISTRICT**

**Board of Directors' Policy**

**PREVENTION OF SEXUAL  
HARASSMENT AS PROHIBITED  
BY TITLE IX**

**POLICY:** C12

**WARNED:** 10.20.20

**ADOPTED:** \_\_\_\_\_

**EFFECTIVE:** \_\_\_\_\_

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**I. Statement of Policy.**

- A. **Prohibiting Title IX Sexual Harassment.** Per Title IX of the Education Amendments Act of 1972 (“Title IX”) the District does not discriminate on the basis of sex in its educational programs and activities, including employment and admissions. All forms of sex-based discrimination, including sexual harassment, are prohibited in the District. A District with actual knowledge of sexual harassment in an educational program or activity of the District against a person in the United States must respond promptly in a manner that is not deliberately indifferent. A District is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. A District may be deemed to have been deliberately indifferent based on its restriction of rights protected under the U.S. Constitution, including the First, Fifth and Fourteenth Amendments.
- B. **Retaliation.** Retaliation as defined by this Policy is expressly prohibited. Complaints alleging retaliation may be filed according to the Title IX Grievance Procedures set forth in Section IV.
- C. **Concurrent Statutory Obligations.** While all forms of sex-based discrimination are prohibited in the District, the purpose of this policy is to address, and only address, *sexual harassment as defined in Title IX and Section II.M. below*. For conduct which satisfies that definition, a school’s response is governed by this policy, and in those cases for which they have received a filing of a formal complaint of same, as set forth under the Title IX Grievance Process set forth in Section IV below. For other forms of inappropriate conduct, or conduct which may satisfy the definition of harassment on the basis of sex under Vermont law, including student misconduct and employment based statutes prohibiting unlawful harassment and other forms of misconduct, the District may have the separate obligation to address those behaviors as required by other school policies and applicable laws.
- D. **Covered Parties.** This Policy shall apply to all students, employees and any third party who contracts with the District to provide services to District students or employees, upon District property or during any school program or activity. A third party under supervision and control of the school system will be subject to termination of contracts/agreements, restricted from access to school property, and/or subject to other consequences, as appropriate.

**II. Definitions**

As used in this Policy and during the Title IX Grievance Process, the terms below shall have the meaning ascribed.

- A. **“Actual Knowledge”** means “notice” of “sexual harassment” or allegations of “sexual harassment” to either (a) a recipient’s Title IX Coordinator; or (b) any official of the recipient who has the authority to institute corrective measures on behalf of the recipient; or (c) to any employee of an elementary and secondary school.

- a. For purposes of this paragraph “sexual harassment” refers to the definition as contained *within this policy*. For other forms of inappropriate conduct, or conduct which may satisfy the definition of harassment on the basis of sex as recognized under Vermont law, schools retain the option and in some cases the obligation, to address those behaviors as required by policy and law.
  - b. Actual knowledge shall not be deemed to exist when the only official of the recipient with actual knowledge is the respondent.
  - c. “Notice” as used in this paragraph includes, but is not limited to, a Report of Sexual Harassment to the Title IX Coordinator as described Section IV.B.
  - d. Notice sufficient to trigger an obligation under this policy only shall exist where any employee has sufficient personal knowledge of alleged facts to be aware that if such facts were found to be true it would constitute a violation of this policy.
  - e. Imputation of knowledge based solely on vicarious liability OR constructive notice shall be insufficient to establish or constitute actual knowledge.
- B. “Complainant”** is an individual who is alleged to be the victim of conduct that could constitute “sexual harassment” under this Policy. In order for an individual to be considered to be a Complainant they need not file Report of Sexual Harassment, nor a Formal Complaint of Sexual Harassment. Where the Title IX Coordinator signs a Formal Complaint of Sexual Harassment, the Title IX Coordinator is not considered a “Complainant.”
- C. “Days”** shall mean calendar days, but shall exclude non-weekend days on which the District office is closed (e.g. holidays, office-wide vacations), or any weekday during the school year on which school is closed (e.g. snow days).
- D. “Decision-Maker”** means persons tasked with either the responsibility of making determinations of responsibility (referred to as “Initial Decision-Maker”); or the responsibility to decide any appeal (referred to as “Appellate Decision-Maker”) with respect to Formal Complaints of Sexual Harassment in accordance with the Title IX Grievance Process.
- E. “Determination of Responsibility”** is the formal finding by the decision-maker on each allegation of Sexual Harassment contained in a Formal complaint that the Respondent did or did not engage in conduct constituting Sexual Harassment under Title IX.
- F. “Disciplinary sanctions”** are consequences imposed on a Respondent when s/he is determined responsible for sexual harassment prohibited under this Policy.
- F. “Emergency Removal”** for purposes of this Policy shall mean 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 immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. Emergency Removals as permitted by this Policy shall 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.
- G. “Formal Complaint of Sexual Harassment”** means a document filed by either (a) a complainant (or complainant’s parent/guardian); or (b) the Title IX Coordinator, alleging sexual harassment

against a respondent AND requesting that the District investigate the allegation of sexual harassment. The issuance or receipt of a Formal Complaint of Sexual Harassment formally triggers the Title IX Grievance Process set forth in Section IV. of this Policy.

- H. **“Investigation of Title IX Sexual Harassment”** Before the District can conduct an Investigation of Sexual Harassment under this Policy, against a Respondent, a Formal Complaint of Sexual Harassment that contains an allegation of sexual harassment and a request that the District investigate the allegations is required. Such investigation is a part of the Title IX Grievance Process, as set forth in Section IV.E.
- I. **“Remedial actions”** are actions intended to restore or preserve a complainant’s equal access to the educational programs and activities of the District.
- J. **”Report of Sexual Harassment”** is any report which provides the District with actual knowledge of sexual harassment or allegations of sexual harassment. Such a report may or may not be accompanied by a Formal Complaint of Sexual Harassment. Without such a Complaint, the Title IX Grievance Process is not triggered. See Section IV.A and IV.B. regarding the process for initiating that process.
- K. **“Respondent”** means an individual who has been reported to be the individual accused (i.e. perpetrator) of conduct that could constitute sexual harassment as defined under this policy.
- L. **“Retaliation”** means intimidation, threats, coercion, or discrimination by either the District or any other person, against any individual for the purpose of interfering with any right or privilege secured by Title IX and/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 in connection with 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 sexual 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 policy, constitutes retaliation.
- Limitation in Scope.
- i. Material False Statements. Actions taken in response to **materially** false statements made in bad faith, or to submitting **materially** false information in bad faith, as part of a report or during the Title IX Grievance Process do not constitute retaliation. A determination of responsibility alone is insufficient to conclude that a person made a materially false statement in bad faith.
  - ii. 1st Amendment Protections. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by this Policy.
- M. **“Sexual harassment”** prohibited under Title IX and by this Policy is conduct on the basis of sex, occurring in an education program or activity of the District, against a person in the United States, that satisfies one or more of the following:
1. A school district employee conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct; **OR**
  2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **AND** objectively offensive that it effectively denies a person equal access to the District’s education program or activity; **OR**
  3. Or any conduct which would satisfies one or more of the following definitions:
    - a. Sexual assault: Any sexual act(s) directed at another person without consent of the victim, including instances where the victim is unable to lawfully give consent because of age or cognitive ability. Consent to a sexual act exists where words, actions or other non-verbal conduct objectively communicates a desire to participate in the sexual act(s). Consent to some sexual act(s) does not indicate consent to all sexual acts. Consent may be withdrawn

at any time by objectively communicating through words, actions or other non-verbal conduct AND/OR

- b. Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or an intimate nature with the victim. The existence of the relationship shall be considered with reference to the length of the relationship, the type of relationship and the frequency of the interactions between the persons involved in the relationship. AND/OR
- c. 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, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner or any other persons protected under 15 V.S.A. section 1101 from domestic abuse. AND/OR
- d. Stalking: A course of conduct by a person directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

Limitation in Scope. For purposes of this policy conduct shall not be deemed to satisfy Title IX's definition of "sexual harassment" if the conduct occurred either (1) outside of the United States and/or (2) includes locations, events or circumstances over which the District did not exercise substantial control over both the respondent and the context in which the harassment occurred.

N. **Supportive Measures** are 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 including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment. These measures may include, but are not limited to, the following:

- 1.counseling;
- 2.extensions of deadlines or other course-related adjustments;
- 3.modifications of work or class schedules;
- 4.campus escort services;
- 5.mutual restrictions on contact between the parties;
- 6.changes in work or housing locations;
- 7.leaves of absence;
- 8.increased security and monitoring of certain areas of the district campus;
- 9.and other similar measures.

### III. **Duties**

#### A. **Reports of Sexual Harassment**

- 1. Any Person May Make a 'Report of Sexual Harassment'. Any person may report sexual harassment whether relating to her/himself or another person. A Report of Sexual Harassment may be made at any time, in person, by mail, by telephone, electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.
  - a. Any Staff Member May Receive Reports. Additionally, while the District strongly encourages Reports of Sexual Harassment to be made directly to the Title IX Coordinator, the report may be made to **any** District staff member, including, for instance, a counselor, teacher or principal.
  - b. In Cases where Title IX Coordinator is Alleged Respondent. If the Title IX Coordinator is the alleged respondent, in such cases either the Report of Sexual Harassment or Formal Complaint of Sexual Harassment may be made directly to the Superintendent, who shall thereafter fulfill

the functions of the Title IX Coordinator regarding that Report/Complaint, or delegate the function to another person.

**B. District Response to Report of Sexual Harassment.**

1. Duty to respond. The District will promptly respond when there is Actual Knowledge of sexual harassment, even if a Formal Complaint of Sexual Harassment has not been filed.
  - a. District Response Must Be Equitable. In its response the District shall treat Complainants and Respondents equitably by providing supportive measures to the Complainant and by following the Title IX Grievance Process prior to imposing any disciplinary sanctions or other actions that are not supportive measures against a Respondent.
  - b. Reports of Harassment Received by District Employees Shall Be Referred to Title IX Coordinator. Where any District employee – other than the employee harasser, or the Title IX Coordinator – receives information of conduct which may constitute sexual harassment under this Policy, s/he shall, without delay, inform the Title IX Coordinator of the alleged sexual harassment. Failure to report will subject the employee to discipline up to and including dismissal.
  - c. Complainant Contact. As soon as reasonably possible after receiving a Report of Sexual Harassment from another District employee or after receiving a report directly through any means, the Title IX Coordinator shall contact the Complainant [and parent/guardian in cases where the complainant is a student under the age of 18] to:
    - i. discuss the availability of and offer supportive measures;
    - ii. consider the complainant’s wishes with respect to supportive measures;
    - iii. inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
    - iv. explain to the complainant the process for filing a Formal Complaint of Sexual Harassment.
2. Formal Investigation of Sexual Harassment. Before the District may conduct a formal investigation of sexual harassment or take any action (other than supportive measures) against a Respondent, a Formal Complaint that contains an allegation of sexual harassment and a request that the District investigate the allegations is required and must be filed by either the Complainant, the Complainant’s Parent/Guardian, or the Title IX Coordinator, as set forth under Section IV.B. below.
3. Initiating the Title IX Grievance Process. A Report of Sexual Harassment alone does **not** initiate a Title IX Grievance Process. Before the District may initiate that process, a Formal Complaint of Sexual Harassment must be filed under the procedures set out in IV.A. (“Title IX Grievance Process”).

**C. Formal Complaints of Sexual Harassment.**

1. Process for Filing a Formal Complaint of Sexual Harassment. The process for filing a Formal Complaint of Sexual Harassment is set forth in Section IV.A. (“Title IX Grievance Process”).
2. District Response to Receipt of Formal Complaint.
  - a. Investigation of Sexual Harassment. The District must investigate the allegations of a Formal Complaint unless both parties voluntarily consent to engage in Informal Resolution, or Dismissal otherwise occurs under Section IV. G. below.
2. District Written Notification to Parties in Response to Receipt of Formal Complaint. Upon receipt of a Formal Complaint, the District must provide written notice as set forth in Section

IV.C. below of the Title IX Grievance Process. In response to a Formal Complaint of Sexual Harassment, the District must follow the Title IX Grievance Process set forth in Section IV.

**D. District Duty to Respond When Determination of Responsibility For Sexual Harassment Has Been Made Against a Respondent.** The District must provide remedies to a Complainant where a determination of responsibility for sexual harassment has been made against a Respondent designed to restore or preserve equal access to the District's education program or activity. Such remedies may include "supportive measures" but also need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

**E. Reporting to Other Agencies.**

1. **Reports to Department of Children and Families.** When a report made pursuant to this policy includes allegations of child abuse, any person responsible for reporting suspected child abuse under 33 V.S.A. § 4491, *et seq.* must report the allegation to the Commission or DCF. If the victim is over the age of 18 and a report of abuse is warranted, the report shall be made to Adult Protective Services in accordance with 33 V.S.A. § 6901 *et seq.*
2. **Reports to Vermont Agency of Education.** If a report of sexual harassment is made to the District about conduct by a licensed educator that might be grounds under Vermont law for licensing action, the principal shall report the alleged conduct to the Superintendent and the Superintendent shall report the alleged conduct to the Secretary. [If a report of sexual harassment is made in an independent school about conduct by a licensed educator that might be grounds under Vermont law for licensing action, the head of school is encouraged to report the alleged conduct to the Secretary of Education.]
3. **Reporting Incidents to Police.**
  - a. **FERPA Rights.** Information obtained and documented by school administration regarding the school's response to notice of student conduct that may constitute sexual harassment may constitute an "educational record" regarding the student or student(s) involved as defined by the Family Education Rights and Privacy Act. Accordingly, such information may not be disclosed without prior parent approval to local law enforcement except in response to a lawfully issued subpoena, or in connection with an emergency if disclosure is necessary to protect the health or safety of the student or other individuals.
  - b. **First Hand Reports.** Nothing in this policy shall preclude persons from reporting incidents and/or conduct witnessed first-hand that may be considered to be a criminal act to law enforcement officials.
4. **Continuing Obligation to Investigate.** Reports made to DCF, AOE or law enforcement shall not be considered to absolve the school administrators of their obligations under this policy, or other school policies where appropriate, to respond, and when appropriate to investigate and follow the Title IX Grievance Process.