

<p>TUCSON UNIFIED SCHOOL DISTRICT</p> <p>GOVERNING BOARD POLICY</p>	<p>POLICY TITLE:</p> <p>Title IX Sex-Based Discrimination</p>
	<p>POLICY CODE: ACAA</p>

Purpose

Title IX of the Federal Education Amendments Act protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. The District does not discriminate on the basis of sex and is required by Title IX not to discriminate in such a manner. The District adheres to all conditions established by Title IX by recognizing the right of every student who attends school in the District and every employee who works in the District to do so without the fear of sex-based discrimination.

Definitions

For the purposes of implementing this policy and for any allegation of sex-based discrimination, the District accepts and shall employ the applicable definitions established by the Title IX regulations, including the following:

Complainant means:

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

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

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

Party means a complainant or respondent.

Relevant means related to the allegations of sex discrimination under investigation as part of these grievance procedures. 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.

Remedies means measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient'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 recipient's education program or activity after a recipient determines that sex discrimination occurred.

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

Retaliation means intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, 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 the Title IX regulations.

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, that is:

- (1) *Quid pro quo harassment.* An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient'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 recipient'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 recipient's education program or activity;
 - (ii) The type, frequency, and duration of the conduct;
 - (iii) The parties' ages, roles within the recipient'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 recipient'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 recipient, 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.

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 recipient's education program or activity, including measures that are designed to protect the safety of the parties or the recipient's educational environment; or
- (2) Provide support during the recipient's grievance procedures or during an informal resolution process.

District Title IX Coordinator

The District shall designate and authorize an employee as the "District Title IX Coordinator" to comply with its responsibilities pertaining to sexual harassment under Title IX. Inquiries about the application of Title IX may be referred to the District's Title IX Coordinator. The District Title IX Coordinator is authorized to delegate duties under this policy to one or more

designees, but the Title IX Coordinator retains ultimate oversight and responsibility for compliance with Title IX and this policy.

The District shall notify students, parents or legal guardians of students, employees, applicants for employment, and all unions or professional organizations holding collective bargaining or professional agreements with the District, of the name or title, office address, electronic mail address, and telephone number of the District Title IX Coordinator, as well as how to report conduct that may constitute sex discrimination and how to make a complaint of sex discrimination.

If a complainant or respondent is a student with a disability, then the District Title IX Coordinator will consult with one or more members of the student's IEP or 504 team, as appropriate, to determine how best to comply with the applicable legal requirements throughout implementation of the grievance procedures.

Grievance Procedures

The District has adopted grievance procedures 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 its education program or activity, or by the District Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

Complaints

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 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 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.

Anyone may report to the District Title IX Coordinator incidents or allegations of sex-based discrimination, including sex-based harassment, even if they are not eligible to make a complaint. District employees must notify the District Title IX Coordinator of any incidents or allegations of sex-based discrimination of which they become aware.

A complaint may be made in person, by mail, by telephone, or by electronic mail, using the contact information listed for the District Title IX Coordinator, or by any other means that results in the District Title IX Coordinator receiving the person's verbal or written complaint. Such a complaint 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 District Title IX Coordinator in Regulation ACAA-R.

The District may consolidate complaints of sex discrimination against more than one 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 (except where such consolidation would violate FERPA). When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

Basic Requirements of Title IX Grievance Procedures

The District will treat complainants and respondents equitably.

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

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

The District will follow reasonably prompt timeframes for the major stages of the grievance procedures (e.g., evaluation of a potential complaint; investigation; determination; and appeal). The District will also follow a 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 timeframes and the process for requesting reasonable extensions are set forth in Regulation ACAA-R.

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 cannot 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, 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.

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 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);
- 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, 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;
- The complainant voluntarily withdraws any or all of the allegations in the complaint, the District 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 District Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

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 decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decisionmaker 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.

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 District Title IX Coordinator to ensure that sex discrimination does not continue or recur within the District's education program or activity.

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.
- 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 decisionmaker 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. That process is described in Regulation ACAA-R.

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 decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded by the preponderance of the evidence that sex discrimination occurred, the decisionmaker 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;
- Not impose discipline 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 District 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
- 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. (Discipline for false statements may still be imposed under the Student Code of Conduct if there is evidence of the false statement independent of the determination of whether sex discrimination occurred).

Appeal of Determinations

The District offers a process for appeals from a determination whether sex discrimination occurred, which process is further described in Regulation ACAA-R. This appeal process will be, at a minimum, the same as the District offers in other proceedings relating to other discrimination complaints. The decisionmaker for the appeal must not have participated in the investigation or the determination of whether sex discrimination occurred.

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. The District does not offer informal resolution 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. The informal resolution process is further described in Regulation ACAA-R.

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. Supportive measures are further described in Regulation ACAA-R.

Disciplinary Sanctions and Remedies

Following a determination that sex-based harassment occurred, the District may impose disciplinary sanctions and additional remedies in accordance with the Student Code of Conduct.

Retaliation Prohibited

Retaliation under this policy, including peer retaliation, is prohibited. Upon receipt of information that may reasonably constitute retaliation under this policy or a complaint alleging retaliation, the District will follow the grievance procedures set forth in this policy, or an informal resolution process, as appropriate.

Confidentiality

The District shall, to the extent reasonably feasible, keep confidential the identity of any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as is necessary to carry out the grievance process and as may otherwise be required or permitted by law.

Title IX sexual harassment complaints may include violations covered by Arizona's mandatory reporting statute, A.R.S. §13-3620. Any abuses classified by statute as

“reportable offenses” must be reported as such to the authorities because not reporting a reportable offense is classified as a Class 6 Felony.

Regulation

The Superintendent shall establish procedures to ensure monitoring and compliance with this policy.

ADOPTED: August 25, 2020
Revised: January 25, 2022
Revised: July 30, 2024

LEGAL REF.:

[A.R.S. §13-3620 – Duty to report abuse](#)

[20 U.S.C. 1092 20 – Title 20 - Education](#)

[Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. 34 U.S.C. 12291
Violence Against Women](#)

CROSS REF:

[ACAA-R- Title IX Sexual Harassment Regulation](#)

[AC – Nondiscrimination](#)

[IHBA – Education of Section 504 Disabled Students](#)

[JB – Equal Educational Opportunities and Anti-Harassment](#)