

# Notice of Rights and Procedural Protections Under Section 504 and the Americans with Disabilities Act

The Kaskaskia Special Education District #801 does not discriminate on the basis of race, color, religion, sex, age, national origin, or disability in admission, access, treatment, or employment in its programs, services, and activities. Applicants, students, parents/guardians, employees, referral agencies, and all organizations holding agreements with the District are hereby notified of this policy. Any person with concerns regarding the District's compliance with the regulations implementing Title VI, Title IX, Section 504 or the Americans with Disabilities Act is directed to contact:

**Name:** Rob Miller  
**Position:** Superintendent  
**Address:** 859 West Missouri, Sandoval, IL  
**Phone Number:** 618-247-3361

This document summarizes the procedures and rights you have as the parent of student who may qualify for accommodations or services under Section 504 and the ADA.

**INTRODUCTION.** Section 504 of the 1973 Rehabilitation Act, along with the Americans with Disabilities Act, (Section 504/ADA), requires that the school district may not discriminate against students with disabilities. Accordingly, the district has adopted policies and procedures to ensure that discrimination does not take place.

**IDEA ELIGIBILITY.** Many students who meet the definition of an "individual with a disability" under Section 504/ADA also qualify for services under the Individuals with Disabilities Education Act (IDEA). Such students are served pursuant to the requirements of the IDEA. The rest of this document addresses only the rights of parents of students who satisfy the definition of an individual with a disability under Section 504/ADA but do not qualify under IDEA.

**AN APPROPRIATE EDUCATION.** If it is determined that your child meets the definition of an individual with a disability under Section 504/ADA, then your child will be entitled to a free and appropriate public education. This means that your child's education will be designed to meet his/her individual educational needs as adequately as the needs of non-disabled students are met. A "free" public education means that no fees will be imposed on you except for the same fees that are imposed on parents of non-disabled students. However, insurance companies and other third parties that are obligated to provide or pay for service to your child are still obligated to do so.

**NOTICE.** You have the right to be notified by the district prior to any action that would identify your child as having a disability, evaluate your child for services under Section 504/ADA, or place your child in a program based on a disability.

**EVALUATION.** Prior to conducting an evaluation of your child for purposes of service under Section 504/ADA, the district will seek your informed written consent. An evaluation will not be conducted unless you give consent. However, school officials may review existing records, test scores, grades, teacher reports, and recommendations and other such information without your consent to the same extent they would do so for non-disabled students.

If an evaluation is conducted, the school will make sure that

- All testing and other evaluation procedures are validated for the specific purpose for which they are used;
- They are administered by trained personnel in conformity with the instructions provided by the producer;
- They include tests and other evaluation materials designed to assess specific areas of educational need and not merely those designed to elicit a general IQ score; and
- Tests are selected and administered to best ensure that they accurately measure what the test seeks to measure, rather than any sensory, speaking, or manual impairments the student may have (except when the test is designed to measure sensory, speaking, or manual skills)

An evaluation that satisfies these requirements will be conducted prior to your child's initial placement and conducted or reviewed prior to any subsequent significant change in placement.

If your child is identified as an individual with a disability under Section 504/ADA the school will periodically reevaluate your child as appropriate.

**PLACEMENT.** If your child is identified as an individual with a disability under Section 504/ADA, placement decisions about your child will be made by the school's 504 Team, which will include professional staff members who, collectively, are knowledgeable about your child, the meaning of the evaluation data, and the placement options. You will be invited to participate in any meeting of the 504 Team if your child's placement and/or services are to be discussed. The 504 Team will also ensure that your child is placed in the "least restrictive environment."

**LEAST RESTRICTIVE ENVIRONMENT.** If your child is identified as an individual with a disability under Section 504/ADA, your child will be placed and served in the "least restrictive environment." This means that your child will be served with non-disabled students in the regular education environment to the maximum extent appropriate. Prior to removing your child from the regular education environment due to

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his/her disability, the school will consider the use of supplementary aids and services. Your child will be removed from the regular education environment only if he/she cannot be served satisfactorily in that environment, even when supplementary aids and services are provided.

If it becomes necessary to service your child in an alternate setting due to disability, the school will take into account the proximity of the alternate setting to your home.

**EXAMINATION OF RECORDS.** You have the right to see and examine any educational records that pertain to your child or are relevant in serving your child.

**HEARINGS.** If you disagree with a decision of the 504 team regarding the identification, evaluation, or educational placement of your child you have the right to an impartial hearing. Parents and school staff should try to work out any differences before moving to due process or filing a complaint with OCR. You have the right to participate in such a hearing and to be represented by a person of your choice, including an attorney.

If you wish to request a hearing, you must make a written request for a hearing within 30 calendar days from the time you receive the written notice of the decision of the 504 Team that you disagree with. Your request for a hearing must be filed with the district's Section 504 Coordinator.

Upon receipt of a timely request for a hearing, the district will notify you of the date, time, and location of the hearing. If you disagree with the decision of the hearing officer, you have the right to a review of that decision by a court a competent jurisdiction.

**OTHER COMPLAINTS.** You also have the right to file a complaint with the district's section 504 Coordinator pertaining to harassment, retaliation or discrimination against your child in ways that do not involve your child's identification, evaluation, or educational placement.

**OFFICE FOR CIVIL RIGHTS.** You also have the right to file a complaint with the Office for Civil Rights.

Form B-1

## PARENTS' RIGHTS IN BRIEF

### Section 504 of the *Rehabilitation Act of 1973*

It is the policy of the Board of Education to provide a free and appropriate public education to each student with a disability. It is the intent of the District to ensure that students who are eligible for services/accommodations within the definition of Section 504 of the *Rehabilitation Act of 1973* are identified, evaluated, and provided with appropriate educational services/accommodations.

Parents (or, if age 18 or older, students) have the following rights under Section 504:

1. Right for your child to take part in and receive benefits from public education programs without discrimination because of his/her disability.
2. Right to have an evaluation that draws on information from a variety of sources.
3. Right to be informed of any proposed actions related to identification, evaluation, placement, or provision of a free appropriate public education of your child.
4. Right to examine all relevant records.
5. Right to receive all information in the parent's/guardian's native language and primary mode of communication.
6. Right to periodic reevaluations and reevaluation before any significant change in placement.
7. Right to a manifestation determination review to determine if your child's misconduct was related to his/her disability before any disciplinary removal that constitutes a significant change in placement.
8. Right to have your child receive appropriate educational services/ accommodations if found eligible under Section 504 of the *Rehabilitation Act*.
9. Right to have your child given an equal opportunity to participate in nonacademic and extra curricular activities offered by the district.
10. Right to file a grievance (under the District's Uniform Grievance Procedure) or request an impartial hearing (under the District's Section 504 Procedural Safeguards) regarding an alleged violation of Section 504. You have the right to forego or terminate the District's grievance and/or hearing procedures and contact the U.S. Department of Education's Office for Civil Rights ("OCR"). Copies of the District's Uniform Grievance Procedure and the District's Section 504 Procedures And Procedural Safeguards are available at \_\_\_\_\_.
11. Right to be represented by counsel in the impartial hearing process.
12. Right to appeal the Superintendent's grievance decision or the impartial hearing officer's decision.

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Building Administrator/Designee

## School Board

### Administrative Procedure - Nondiscrimination Coordinator and Complaint Manager <sup>1</sup>

The Nondiscrimination Coordinator directs the District's compliance with federal and State laws governing discrimination and harassment in the workplace. The Complaint Manager administers the complaint process in Board policy 2:260, *Uniform Grievance Procedure*.

#### **Superintendent Responsibilities**

- A. Appoints individuals to serve as a Nondiscrimination Coordinator and Complaint Manager whose skill set suggest they could effectively fulfill the responsibilities identified in this procedure. One individual may serve in both capacities. The Superintendent may serve in either capacity. If possible, at least 2 Complaint Managers are appointed, one of each gender.
- B. Identifies individuals to supervise the performance of the Nondiscrimination Coordinator and Complaint Manager. The supervisor must understand the responsibilities of each role and have authority to take action. If possible, a different individual is assigned to supervise each role as a control measure, e.g., the Human Resources Manager supervises the Nondiscrimination Coordinator's performance and the Superintendent supervises the Complaint Manager's performance.
- C. Requires each Nondiscrimination Coordinator and/or Complaint Manager to possess or obtain:
  1. In-depth knowledge of Board policies as well as rules and conduct codes for students and employees.
  2. General knowledge of State and federal laws concerning equal employment and educational opportunities.
  3. Ability to:
    - a. Communicate effectively, both orally and in writing, and to establish rapport with others;
    - b. Plan, implement, evaluate, and report activities conducted;
    - c. Be both consistent and flexible as circumstances warrant; and
    - d. Analyze, clarify, and mediate differences of opinion.
- D. Facilitates the effective performance of the Nondiscrimination Coordinator and Complaint Managers by:
  1. Providing them with clear expectations concerning their roles and responsibilities.
  2. Communicating to employees and students their functions and responsibilities.
  3. Providing them resources and professional development opportunities.
  4. Providing them access to the Board Attorney for legal advice concerning their responsibilities.

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The footnotes should be removed before the material is used.

<sup>1</sup> This sample procedure must be customized to assure alignment with the district's policies, procedures, and practices. At least one employee must be designated to complete the coordinator/complaint manager responsibilities (34 C.F.R. §106.8(a); see also 29 C.F.R. §1604.11). Even small districts should strongly consider having a coordinator/complaint manager of each gender – this is an important measure to uncover sexual harassment and minimize liability exposure.

### **Nondiscrimination Coordinator Responsibilities**

- A. Directs the District's efforts to provide equal employment and educational opportunities and prohibit the harassment of employees, students, and others. Manages compliance with Board policies 2:260, *Uniform Grievance Procedure*; 5:10, *Equal Employment Opportunity and Minority Recruitment*; 5:20, *Workplace Harassment Prohibited*; and 7:20, *Harassment of Students Prohibited*.
- B. Develops and manages a program that will fully inform all employees and students about the District's commitment to equal employment and educational opportunities and a harassment-free environment. A component of this program is to inform employees and students about Board policies and administrative procedures.
- C. Provides ongoing consultation, technical assistance, and information services regarding compliance requirements and programs.
- D. Assists the Human Resources Manager with monitoring compliance with the recordkeeping and notice requirements contained in federal and State laws concerning discrimination and harassment in schools and the workplace.
- E. Maintains grievance and compliance records and files.
- F. Makes recommendations for action by appropriate decision makers.
- G. Establishes a positive climate for nondiscrimination compliance efforts. This effort includes encouraging individuals to come forward with suggestions and complaints.

### **Complaint Manager Responsibilities**

- A. Implements and administers the grievance process contained in Board policy 2:260, *Uniform Grievance Procedure*.
- B. Manages complaints alleging a violation of any Board policy or procedure listed in the next section.
- C. Assists complainants and potential complainants by, among other things, providing consultation and information to them.
- D. Attempts to resolve complaints without resorting to the formal grievance process provided in Board policy 2:260, *Uniform Grievance Procedure*.
- E. Informs potential complainants, complainants, and witnesses that the District prohibits any form of retaliation against anyone who, in good faith, brings a complaint or provides information to the individual investigating a complaint.
- F. Receives formal complaints and notifies relevant individuals of the ensuing process.
- G. Investigates complaints or appoints a qualified individual to undertake the investigation on his or her behalf. Each complaint shall be investigated promptly, thoroughly, and impartially, and as confidentially as possible.
- H. For each formal complaint, prepares a comprehensive written report describing the: (a) complaint, (b) investigation, and (c) findings and recommendations. Provides the report to the Superintendent or School Board if the Superintendent is an alleged responsible party.
- I. Receives a request from a complainant to appeal the Superintendent's resolution of the complaint and promptly forwards all relevant material to the Board.
- J. Monitors compliance with all requirements and time-lines specified in Board policy 2:260, *Uniform Grievance Procedure*.

## Applicable Policies and Procedures

### Section 2

- 2:260 Uniform Grievance Procedure
- 2:260-AP2 Administrative Procedure - Nondiscrimination Coordinator and Complaint Manager

### Section 5

- 5:10 Equal Employment Opportunity and Minority Recruitment
- 5:20 Workplace Harassment Prohibited
- 5:20-AP Administrative Procedure - Sample Questions and Considerations for Conducting the Internal Harassment in the Workplace Investigation

### Section 6

- 6:120 Education of Children with Disabilities
- 6:140 Education of Homeless Children
- 6:140-AP Administrative Procedure - Education of Homeless Children
- 6:170 Title I Programs
- 6:260 Complaints About Curriculum, Instructional Materials, and Programs

### Section 7 - Students

- 7:10 Equal Educational Opportunities
- 7:10-AP1 Accommodating Transgender Students or Gender Non-Conforming Students; Supports and Inclusion
- 7:20 Harassment of Students Prohibited
- 7:20-AP Administrative Procedure - Harassment of Students Prohibited
- 7:180 Prevention of and Response to Bullying, Intimidation, and Harassment
- 7:190 Student Behavior

### Section 8 - Community Relations

- 8:70 Accommodating Individuals with Disabilities
- 8:110 Public Suggestions and Concerns

## Resources

U.S. Equal Employment Opportunity Commission, [www.eeoc.gov](http://www.eeoc.gov).

“Enforcement Guidance and Related Documents,” U.S. Equal Employment Opportunity Commission, [www.eeoc.gov/policy/guidance.html](http://www.eeoc.gov/policy/guidance.html).

“Sexual Harassment: It’s Not Academic” U.S. Dept. of Education, Office for Civil Rights, [www.ed.gov/about/offices/list/ocr/docs/ocrshpam.html](http://www.ed.gov/about/offices/list/ocr/docs/ocrshpam.html).

“Frequently Asked Questions about Sexual Harassment,” U.S. Dept. of Education, Office for Civil Rights, [www.ed.gov/about/offices/list/ocr/qa-sex.html](http://www.ed.gov/about/offices/list/ocr/qa-sex.html).

“Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties,” Office for Civil Rights, [www.ed.gov/about/offices/list/ocr/docs/shguide.html](http://www.ed.gov/about/offices/list/ocr/docs/shguide.html).

“Q&A Regarding Title IX Procedural Requirements,” U.S. Dept. of Justice, [www.justice.gov/crt/about/cor/coord/TitleIXQandA.php](http://www.justice.gov/crt/about/cor/coord/TitleIXQandA.php).

## Instruction

### Education of Children with Disabilities <sup>1</sup>

The School District shall provide a free appropriate public education in the least restrictive environment and necessary related services to all children with disabilities enrolled in the District, as required by the Individuals With Disabilities Education Act (IDEA) and implementing provisions of the School Code, Section 504 of the Rehabilitation Act of 1973, and the Americans With Disabilities Act.<sup>2</sup> The term *children with disabilities*, as used in this policy, means children between ages 3 and 21 (inclusive) for whom it is determined, through definitions and procedures described in the Ill. State Board of Education (ISBE) *Special Education* rules, that special education services are needed.

It is the intent of the District to ensure that students who are disabled within the definition of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated, and provided with appropriate educational services. Students may be disabled within the meaning of Section 504 of the Rehabilitation Act even though they do not require services pursuant to the IDEA.

For students eligible for services under IDEA, the District shall follow procedures for identification, evaluation, placement, and delivery of services to children with disabilities provided in the ISBE *Special Education* rules. For those students who are not eligible for services under IDEA, but, because of disability as defined by Section 504 of the Rehabilitation Act of 1973, need or are believed to need special instruction or related services, the District shall establish and implement a system of procedural safeguards. The safeguards shall cover students' identification, evaluation, and educational placement. This system shall include notice, an opportunity for the student's parent(s)/guardian(s) to examine relevant records, an impartial hearing with opportunity for participation by the student's parent(s)/guardian(s), representation by counsel, and a review procedure.<sup>3</sup>

The District may maintain membership in one or more cooperative associations of school districts that shall assist the District in fulfilling its obligations to the District's disabled students.

If necessary, students may also be placed in nonpublic special education programs or education facilities.<sup>4</sup>

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The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

<sup>1</sup> State or federal law controls this policy's content. Each school district and special education cooperative must develop written special education policies and procedures in conformance with ISBE rules. 23 Ill.Admin.Code §226.710. In its continuing commitment to help school districts and special education cooperatives comply with ISBE requirements for policy and procedure, the Ill. Council of School Attorneys, special education committee, reviewed this policy and prepared extensive procedures, *Special Education Procedures Assuring the Implementation of Comprehensive Programming for Children with Disabilities*, at: [www.iasb.com/law/](http://www.iasb.com/law/).

<sup>2</sup> Opinions vary regarding the extent of a district's responsibility for providing FAPE to dually enrolled students, i.e., whether the responsibility is limited to the extent necessary to access the public portion of their education. Contact the board attorney for advice.

<sup>3</sup> Districts must use ISBE's procedural safeguards for students who qualify for services under IDEA. For students who qualify for services exclusively under Section 504, the district must establish a system of procedural safeguards or use the ones provided by ISBE *Special Education* rules. 23 Ill.Admin.Code §§226.500-570. ISBE rules are more extensive than is required by Section 504 and districts may, as the policy provides, develop their own procedures. See 6:120-E, *Notice to Parents/Guardians Regarding Section 504*.

<sup>4</sup> The district may be eligible to receive reimbursement from the State for the student's expenses. 105 ILCS 5/14-7.02.

LEGAL REF.: 20 U.S.C. §1400 et seq., Individuals With Disabilities Education Improvement Act of 2004.  
29 U.S.C. §794, Rehabilitation Act of 1973, Section 504.  
42 U.S.C. §12101 et seq., Americans With Disabilities Act.  
34 C.F.R. §300.  
105 ILCS 5/14-1.01 et seq., 5/14-7.02, and 5/14-7.02b.  
23 Ill.Admin.Code Part 226.

CROSS REF.: 2:150 (Committees), 7:230 (Misconduct by Students with Disabilities)



## School Board

### Administrative Procedure - Guidelines for Investigating Complaints and Allegations of Misconduct

All complaints are to be investigated, even when the complainant requests that nothing be done or is anonymous.

#### **Step 1:** Before the Investigation

- A. School employees must immediately report a suspicion of child abuse or neglect to the Illinois Department of Child and Family Services in compliance with State law and policy 5:90, *Abused and Neglected Child Reporting*. Reporting is required before proceeding further with the investigation.
- B. According to policy 2:260, *Uniform Grievance Procedure*, the Superintendent appoints at least one District Complaint Manager to administer the complaint process. If possible, the Superintendent will appoint two Complaint Managers, one of each gender. A Complaint Manager investigates: (1) complaints filed under policy 2:260, *Uniform Grievance Procedure*, and (2) allegations of employee misconduct.
- C. The appropriate Building Principal or designee investigates all allegations of student misconduct.
- D. Anyone with a complaint or making an allegation of misconduct should be referred to a Complaint Manager of their choosing or a Building Principal without delay.
- E. A Complaint Manager or Building Principal (hereafter referred to as *investigator*) will investigate all complaints or allegations of misconduct, except that, depending on the circumstances, the Superintendent or School Board may appoint a special investigator. Whenever the Superintendent deems necessary, an attorney may serve as a special investigator. See *considerations* under F below. The investigator should not have any involvement with the complainant or the alleged wrongdoer outside of the investigation. The Superintendent will ensure that investigators have sufficient authority and resources, including access to the School Board Attorney.
- F. Contact the Board Attorney to discuss the investigation process, including without limitation:
  1. Whether the investigator's notes and investigation records (including, without limitation, any audio or video recordings, photographs, or electronic images) are education records for purposes of the federal Family Education Rights and Privacy Act (FERPA) and/or school student records as defined in the Ill. School Student Records Act (105 ILCS 10/, implemented by 23 Ill.Admin.Code §375.10)?
  2. Whether the investigator's notes and investigation records (including, without limitation, any audio or video recordings, photographs, or electronic images) will be subject to disclosure pursuant to a FOIA request? A PAC opinion, binding on the parties, found that a city's investigatory records of an employee were not private or adjudicatory records and must be disclosed pursuant to a FOIA request (PAC Opinion 13-110).
  3. Whether to record conversations, and if so, how to obtain and document consent under the criminal eavesdropping statute? 720 ILCS 5/14-1 et seq., amended by

P.A. 98-1142, prohibits recording a conversation in which someone has a reasonable expectation of privacy without the consent of all parties.

4. Whether the Board Attorney should participate in or conduct the investigation? Whether an outside attorney should serve as a special investigator? Considerations include:
  - a. The U.S. Supreme Court has held that a private attorney temporarily retained by government to perform an investigation of an employee is entitled to seek qualified immunity from suit under Section 1983. Filarsky v. Delia, 132 S.Ct. 1657 (2012).
  - b. The FOIA exemption for communications between a public body and its attorney is available in only limited situations. See PAC Opinion 14-02 interpreting 5 ILCS 140/7(m).
  - c. Documents prepared by attorneys conducting an investigation under the prospect of litigation will not be subject to discovery during a subsequent lawsuit. Sandra TE v. South Berwyn School Dist., 600 F. 3d 612 (7th Circuit 2010) (when attorneys, as attorneys, perform a factual investigation, their documents are protected by the attorney-client privilege and the work-product doctrine).
- G. The investigator should provide a fair opportunity for both sides to be heard.
- H. The investigator should begin by carefully reading the complaint. Next the investigator should review applicable Board policies, administrative procedures and manuals, laws, regulations, and collective bargaining agreements.
- I. The investigator should develop a plan, including:
  1. Witness list
  2. Order of interviews
  3. Questions for witnesses
  4. Physical evidence needed, e.g., records, documents, reports, photos, and letters
- J. The investigator should make logistical arrangements, e.g., determine interview location and the need for photographs and/or a video or audio recording.
- K. If the investigator encounters an issue with legal ramifications outside of his/her understanding, either before or during the investigation, he/she should consult the Board Attorney before proceeding further on that legal issue, as well as any other areas of the investigation it impacts.

## **Step 2: The Investigation**

- A. Typically, interview the complainant first, next the subject of the investigation, and, finally, all witnesses. The following applies to all interviews:
  1. If possible, statements should be written, dated, and signed by the person being interviewed. Do not audio or video record statements without first obtaining the Board Attorney's advice concerning legal prerequisites and treatment of the recordings.
  2. Ask open-ended questions and do not suggest answers to questions.
  3. Record important details, essentially who, did what, to whom, when, and how done and, if appropriate, why?

4. Be objective and nonjudgmental; do not prejudge an alleged wrongdoer's guilt. Never show outrage or dismay.
  5. Ask for the names of any other witnesses.
  6. Deal with emotional outbursts and anger by patiently explaining that details are needed for an accurate investigation.
  7. If a witness cannot be interviewed, record the reason.
- B. While confidentiality should be maintained, do not make promises of confidentiality or anonymity. Only the Superintendent may promise confidentiality or anonymity.
  - C. Keep the Superintendent informed, but do not discuss the investigation with Board members in order to avoid the appearance of prejudice or unfairness.
  - D. Obtain copies of all relevant written or electronic communications. Originals are not needed, but record how to get them.
  - E. Collect physical evidence and photographs. Keep a record of when, and where, or from whom physical evidence was gathered.
  - F. Document any information about the interview that is relevant, or may become relevant, including the person's demeanor, gestures, accuracy of memory, and overall credibility.
  - G. During the investigation, keep the investigation file separate from personnel or student record files. In a subsequent hearing, the opposing side may be able to view the investigation file. Records relating to a public body's adjudication (hearing) of employee grievances or disciplinary cases are exempt from Freedom of Information Act public records requests under 5 ILCS 140/7(1)(n). However, the exemption does not extend to the final outcome of cases in which discipline is imposed.

**Step 3: Following the Investigation**

- A. Report to the Superintendent or designee the investigation results, that is, the matters investigated, facts, conclusions, and recommendations. Prepare a written report if appropriate or requested.
  1. Answer who, what, when, where, why, and how.
  2. Factual findings are based on whether an incident's occurrence is more likely than not. Identify as many factual findings as possible to support a conclusion. In a "he said, she said" scenario, a decision can be based on the credibility of the parties and witnesses. Include in the report any findings that are inconclusive.
  3. Make a determination regarding credibility of specific evidence, that is, how believable is it and why by explaining the basis for the determination. Credible evidence is capable of belief by a reasonable person.
- B. Be prepared to testify as to the fairness of the investigation, the authenticity of the evidence, and the contents of the investigation report.

## Students

### Harassment of Students Prohibited <sup>1</sup>

#### Bullying, Intimidation, and Harassment Prohibited

No person, including a District employee or agent, or student, shall harass, intimidate, or bully a student on the basis of actual or perceived: race; color; national origin; military status; unfavorable discharge status from military service; sex; sexual orientation; gender identity; gender-related identity or expression; ancestry; age; religion; physical or mental disability; order of protection status; status of being homeless; actual or potential marital or parental status, including pregnancy; association with a person or group with one or more of the aforementioned actual or perceived characteristics; or any other distinguishing characteristic. The District will not tolerate harassing, intimidating conduct, or bullying whether verbal, physical, sexual, or visual, that affects the tangible benefits of education, that unreasonably interferes with a student's educational performance, or that creates an intimidating, hostile, or offensive educational environment. Examples of prohibited conduct include name-calling, using derogatory slurs, stalking, sexual violence, causing psychological harm, threatening or causing physical harm, threatened or actual destruction of property, or wearing or possessing items depicting or implying hatred or prejudice of one of the characteristics stated above. <sup>2</sup>

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<sup>1</sup> State or federal law requires this subject matter be covered by policy and controls this policy's content. Each district must have a policy on bullying. 105 ILCS 5/27-23.7, amended by P.A. 100-137; see 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*.

This policy's list of protected classifications is identical to the list in 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*. The protected classifications are found in 105 ILCS 5/27-23.7(a); 775 ILCS 5/1-103; and 23 Ill.Admin.Code §1.240.

The list of protected classifications in sample policy 7:10, *Equal Educational Opportunities*, is different – it does not contain the classifications that are exclusively identified in the bullying statute. 105 ILCS 5/27-23.7.

The Ill. Human Rights Act (IHRA) and an ISBE rule prohibit schools from discriminating against students on the basis of *sexual orientation* and *gender identity*. 775 ILCS 5/5-101(11); 23 Ill.Admin.Code §1.240. *Sexual orientation* is defined as the "actual or perceived heterosexuality, homosexuality, bisexuality, or gender related identity, whether or not traditionally associated with the person's designated sex at birth." 775 ILCS 5/1-103(O-1). *Gender identity* is included in the definition of sexual orientation in the Act. The Act permits schools to maintain single-sex facilities that are distinctly private in nature, e.g., restrooms and locker rooms. 775 ILCS 5/5-103. 775 ILCS 5/1-102(A), added *order of protection status* to its list of protected categories. The IHRA's jurisdiction is specifically limited to: (1) failing to enroll an individual, (2) denying access to facilities, goods, or services, or (3) failing to take corrective action to stop severe or pervasive harassment of an individual. 775 ILCS 5/5-102.2.

<sup>2</sup> This list of examples of prohibited conduct is optional. While hate speech is not specifically mentioned in this paragraph, any hate speech used to harass or intimidate is banned. Hate speech without accompanying misconduct may be prohibited in response to actual incidences when hate speech interfered with the educational environment. *West v. Derby Unified Sch. Dist.*, 206 F.3d 1358 (10th Cir. 2000).

## Sexual Harassment Prohibited

Sexual harassment of students is prohibited.<sup>3</sup> Any person, including a district employee or agent, or student, engages in sexual harassment whenever he or she makes sexual advances, requests sexual favors, and/or engages in other verbal or physical conduct, including sexual violence, of a sexual or sex-based nature, imposed on the basis of sex, that:

1. Denies or limits the provision of educational aid, benefits, services, or treatment; or that makes such conduct a condition of a student's academic status; or
2. Has the purpose or effect of:
  - a. Substantially interfering with a student's educational environment;
  - b. Creating an intimidating, hostile, or offensive educational environment;
  - c. Depriving a student of educational aid, benefits, services, or treatment; or
  - d. Making submission to or rejection of such conduct the basis for academic decisions affecting a student.

The terms *intimidating*, *hostile*, and *offensive* include conduct that has the effect of humiliation, embarrassment, or discomfort. Examples of sexual harassment include touching, crude jokes or pictures, discussions of sexual experiences, teasing related to sexual characteristics, and spreading rumors related to a person's alleged sexual activities. The term *sexual violence* includes a number of different acts. Examples of sexual violence include, but are not limited to, rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

## Making a Complaint; Enforcement

Students are encouraged to report claims or incidences of bullying, harassment, sexual harassment, or any other prohibited conduct to the Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students, a Complaint Manager, or any staff member with whom the student is comfortable speaking<sup>4</sup>. A student may choose to report to a person of the student's same

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<sup>3</sup> Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex in any educational program or activity receiving federal financial assistance. 20 U.S.C. §1681. For purposes of Title IX, sexual harassment of students includes acts of sexual violence. Consult the board attorney to ensure the non-discrimination coordinator and complaint managers are trained to appropriately respond to allegations of discrimination based upon sexual violence under Title IX's sexual harassment umbrella. Several guidance documents highlight appropriate responses to sexual violence under Title IX. See *f/n* 4 in policy 2:260, *Uniform Grievance Procedure* for a listing and links to these documents.

The sample policy's definition of *sexual harassment* does not distinguish between *welcome* and *unwelcome* behaviors - each is prohibited if it has a result described in sub-paragraph 1 or 2. See *Mary M. v. North Lawrence Community Sch. Corp.*, 131 F.3d 1220 (7th Cir. 1997) (An eighth grade student did not need to show that a school employee's sexual advances were *unwelcome* in order to prove sexual harassment.).

School districts are liable for damage awards for an employee's sexual harassment of a student in limited situations. Liability occurs only when a district official who, at a minimum, has authority to institute corrective action, has actual notice of and is deliberately indifferent to the employee's misconduct. *Gebser v. Lago Vista Independent Sch. Dist.*, 524 U.S. 274 (1998). Schools are liable in student-to-student sexual harassment cases when school agents are deliberately indifferent to sexual harassment, of which they have actual knowledge that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999). The Ill. Dept. of Human Rights now has jurisdiction over allegations that a school failed to take corrective action to stop severe or pervasive harassment of an individual based upon a protected category. 775 ILCS 5/5-102.2.

<sup>4</sup> Using "or any staff member with whom the student is comfortable speaking" is consistent with 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*. By including "any staff member" in this list, this policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right.

sex. Complaints will be kept confidential to the extent possible given the need to investigate. Students who make good faith complaints will not be disciplined.

An allegation that a student was a victim of any prohibited conduct perpetrated by another student shall be referred to the Building Principal, Assistant Building Principal, or Dean of Students for appropriate action.

The Superintendent shall insert into this policy the names, addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers.<sup>5</sup> At least one of these individuals will be female, and at least one will be male.

**Nondiscrimination Coordinator: 6**

Rob Miller  
Name  
649 W. Missouri Ave  
Address  
Rob.miller@sandoval501.org  
Email  
618-247-3361  
Telephone

**Complaint Managers:**

Matt Dannanman  
Name  
649 W. Missouri Ave  
Address  
Matt.dannanman@sandoval501.org  
Email  
618-247-3361  
Telephone

Annie Gray  
Name  
649 W. Missouri Ave  
Address  
Annie.gray@sandoval501.org  
Email  
618-247-3361  
Telephone

The Superintendent shall use reasonable measures to inform staff members and students of this policy, such as, by including it in the appropriate handbooks. <sup>7</sup>

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<sup>5</sup> Title IX regulations require districts to identify the person, address, and telephone number of the individual responsible for coordinating the district's compliance efforts. The U.S. Dept. of Education's Office for Civil Rights prefers that school districts make Title IX information and coordinators visible to the community, and it has provided materials designed to remind schools of their obligation to designate a Title IX coordinator. These materials include: (a) a *Dear Colleague Letter on Title IX Coordinators*; (b) a *Letter to Title IX Coordinators* that provides them with more information about their role; and (c) a *Title IX Resource Guide* that includes an overview of Title IX's requirements with respect to several key issues. See [www2.ed.gov/policy/rights/guid/ocr/title-ix-coordinators.html](http://www2.ed.gov/policy/rights/guid/ocr/title-ix-coordinators.html).

While the names and contact information are required by law to be listed, they are not part of the adopted policy and do not require board action. This allows for additions and amendments to the names and contact information when necessary. It is important for updated names and contact information to be inserted into this policy and regularly monitored.

Each district must communicate its bullying policy to students and their parents/guardians. 105 ILCS 5/27-23.7, amended by P.A. 100-137; see 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*.

<sup>6</sup> Sample policy 2:260, *Uniform Grievance Procedure*, states that a district's Nondiscrimination Coordinator also serves as its Title IX Coordinator. Best practice is that throughout the district's board policy manual, the same individual be named as Nondiscrimination Coordinator. In contrast, Complaint Managers identified in individual policies may vary depending upon local district needs.

Any District employee who is determined, after an investigation, to have engaged in conduct prohibited by this policy will be subject to disciplinary action up to and including discharge. Any District student who is determined, after an investigation, to have engaged in conduct prohibited by this policy will be subject to disciplinary action, including but not limited to, suspension and expulsion consistent with the behavior policy. Any person making a knowingly false accusation regarding prohibited conduct will likewise be subject to disciplinary action up to and including discharge, with regard to employees, or suspension and expulsion, with regard to students.

LEGAL REF.: 20 U.S.C. §1681 et seq., Title IX of the Educational Amendments of 1972.  
34 C.F.R. Part 106.  
105 ILCS 5/10-20.12, 10-22.5, 5/27-1, and 5/27-23.7.  
775 ILCS 5/1-101 et seq., Illinois Human Rights Act.  
23 Ill.Admin.Code §1.240 and Part 200.  
Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999).  
Franklin v. Gwinnett Co. Public Schs., 503 U.S. 60 (1992).  
Gebser v. Lago Vista Independent Sch. Dist., 524 U.S. 274 (1998).  
West v. Derby Unified Sch. Dist. No. 260, 206 F.3d 1358 (10th Cir. 2000).

CROSS REF.: 2:260 (Uniform Grievance Procedure), 5:20 (Workplace Harassment Prohibited),  
7:10 (Equal Educational Opportunities), 7:180 (Prevention of and Response to  
Bullying, Intimidation, and Harassment), 7:185 (Teen Dating Violence  
Prohibited), 7:190 (Student Behavior), 7:240 (Conduct Code for Participants in  
Extracurricular Activities)

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<sup>7</sup> In addition to notifying students of the Uniform Grievance Procedure, a district must notify them of the person(s) designated to coordinate the district's compliance with Title IX. 34 C.F.R. Part 106.8(a). A comprehensive student handbook can provide required notices, along with other important information to recipients. The handbook can be developed by the building principal, but should be reviewed and approved by the superintendent and school board.

The Illinois Principals Association maintains a handbook service that coordinates with **PRESS** material, *Online Model Student Handbook (MSH)*, at: [www.ilprincipals.org/resources/model-student-handbook](http://www.ilprincipals.org/resources/model-student-handbook).