

Title IX: Sexual Harassment Employees

Title IX of the Education Amendments of 1972 and its implementing regulations in 34 C.F.R. Part 106 (collectively “Title IX”), Title VII of the Civil Rights Act of 1964 (“Title VII”), and the Wisconsin Fair Employment Act (Wis. Stat. §§111.31-111.395), all protect employees from discrimination, including harassment, on the basis of sex. CESA 10 (also referred to herein as “Agency”) does not discriminate on the basis of sex in its education programs or activities, and it is required by Title IX not to discriminate in such a manner. The requirement not to discriminate in the Agency’s education programs and activities extends to employment. Inquiries about the application of Title IX may be referred to the Title IX Coordinator or the Assistant Secretary for Civil Rights of the United States Department of Education, or both. Contact information for the Title IX Coordinator is provided below.

This policy is only intended to address sexual harassment against employees under Title IX in programs or activities of the Agency. Any other type of discrimination and harassment (including sexual harassment under Title VII or the Wisconsin Fair Employment Act) against employees, based on race, color, national origin, age, sex, sexual orientation, pregnancy, creed or religion, genetic information, disability, marital status, citizenship status, veteran status, ancestry, arrest record, conviction record, or any other status protected by law, is addressed in Policy 512.1. Sexual harassment under Title IX against students and other individuals in programs or activities of the Agency is addressed in Policy 411.1.

This policy does not apply to sexual harassment under Title IX that occurs in a program or activity of a school district, charter school, or other educational institution. When an employee of the Agency has actual notice of sexual harassment that occurs in a program or activity of a school district, charter school, or other educational institution, the employee of the Agency shall report the sexual harassment to the Title IX Coordinator of the applicable educational institution.

I. Definition of Sexual Harassment under Title IX

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

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

II. Notice of Sexual Harassment under Title IX

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

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

“Education program or activity” includes locations, events, or circumstances over which the Agency exercises substantial control over both the individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX and the context in which the sexual harassment occurred. This definition does not include education programs or activities that occur outside the United States.

III. Identification of Title IX Coordinators

The Executive Director of Operations is designated as the “Title IX Coordinator” and authorized by the Agency to coordinate its efforts to comply with Title IX and this Policy. The contact information for the Title IX Coordinator is as follows:

Executive Director of Operations
725 W. Park Avenue, Chippewa Falls, WI 54729
715.720.2078
cwislinsky@cesa10.k12.wi.us

IV. Reporting Sexual Harassment under Title IX

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

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

V. Response to Report of Sexual Harassment under Title IX

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

The Title IX Coordinator shall promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without filing a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant 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 Agency's education program or activity without unreasonably burdening the other party, while protecting the safety of all parties and the Agency's educational and employment environment; and deterring sexual harassment. Supportive measures may include counseling, extensions of deadlines or other adjustments, modifications of work schedules, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of work areas, and other similar measures.

The Agency must maintain as confidential any supportive measures provided to the Complainant to the extent that maintaining such confidentiality would not impair the ability of the Agency to provide the supportive measures.

VI. Administrative Leave

The Agency may place an employee Respondent on administrative leave, including during the pendency of a grievance process. The Agency shall also comply with any applicable requirements under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act when placing a Respondent on administrative leave.

VII. Formal Complaint

A Formal Complaint is a document filed by a Complainant or signed by the Title IX Coordinator, alleging sexual harassment against a Respondent and requesting the Agency investigate the allegation of sexual harassment. At the time a Formal Complaint is filed by the Complainant or signed by the Title IX Coordinator, the named Complainant must be participating in or attempting to participate in the education program or activity of the Agency.

A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, by electronic mail, by using the contact information for the Title IX Coordinator, or by any additional method designated by the Agency. A document filed by a Complainant means a document or electronic submission that contains the Complainant's physical or digital signature or otherwise indicates that the Complainant is the person filing the Formal Complaint. If the Agency receives a Formal Complaint, the Agency must follow the grievance process below.

If a Complainant does not wish to file a Formal Complaint, a Title IX Coordinator may determine whether to sign the complaint. The Title IX Coordinator may not sign the Formal Complaint against the wishes of the Complainant if involving the Complainant in the grievance process would be clearly unreasonable in light of the known circumstances. The Title IX Coordinator does not become a Complainant or party to the complaint by signing a Formal Complaint.

VIII. Grievance Process

The Agency's grievance process shall include all the basic requirements under Title IX and all Agency employees involved in a complaint shall adhere to the process.

Any individual designated by the Agency as a Title IX Coordinator, investigator, decision-maker, appeal-decision maker, or facilitator of an informal resolution shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. In addition, there shall be a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

A. Written Notice

Upon receiving a Formal Complaint, the Agency shall provide a written notice to the parties who are known. The written notice shall be provided to the parties with sufficient time to prepare a response before any initial interview and in no event, no later than forty-five (45) days of receipt of the Formal Complaint.

The written notice shall include:

1. Notice of the Agency's grievance process, including any informal resolution process;
2. Notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time of the notice (identities of the parties involved in the incident, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident);
3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
4. A statement that the parties may request to inspect and review evidence that is directly related to the allegations raised in the Formal Complaint;
5. A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney; and
6. Notice to the parties of any provision in the Agency's policies, employee handbook, or code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, during an investigation, the Agency decides to investigate allegations about the Complainant or Respondent that are not included in the notice, the Agency shall provide notice of the additional allegations to the parties whose identities are known.

B. Dismissal of Formal Complaint

Mandatory Dismissal

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

Discretionary Dismissal

The Agency **may** dismiss a Formal Complaint if, at any time during the investigation, any of the following occurs: (1) the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint; (2) the Respondent is no longer enrolled in or employed by the Agency; or (3) specific circumstances prevent the Agency from gathering evidence sufficient to reach a determination as to the Formal Complaint. If such dismissal occurs, the Agency must promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties. If dismissed, the Agency will review whether the complaint should be investigated under other applicable policies.

C. Consolidation

The Agency may consolidate Formal Complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against another party, where the allegations of sexual harassment arise out of the same facts or circumstances.

D. Informal Resolution

Following the filing of a Formal Complaint, and at any time prior to reaching a determination regarding responsibility, the Agency may facilitate an informal resolution process, including mediation, which does not involve a full investigation and adjudication. The Agency shall not require as a condition of employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Complaints of sexual harassment under Title IX. The Agency shall not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a Formal Complaint is filed.

Before conducting any informal resolution process, the Agency will provide to the parties a written notice disclosing: (1) the allegations; (2) the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, if any; (3) that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Formal Complaint process; and, (4) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared and whether the facilitator of the informal resolution process may be a witness in any subsequent Formal Complaint process. The Agency will obtain the parties' voluntary written consent to the informal resolution process. Any such informal resolution process shall be resolved within thirty

(30) days of the written notice described in this paragraph, unless additional time is needed as determined by the Agency.

E. Investigation of Formal Complaint

The Agency shall designate an investigator to investigate the allegations in a Formal Complaint and ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the Agency and not on the parties. The investigation process instituted by the Agency shall treat Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility for sexual harassment has been made against the Respondent and by following a grievance process that complies with Title IX before imposition of any disciplinary sanctions or other actions that are not supportive measures against a Respondent.

During the investigation, the Agency shall:

1. Not restrict the ability of either party to gather and present relevant evidence, or to discuss the allegations under investigation;
2. Provide equal opportunity for the parties to present witnesses and other inculpatory and exculpatory evidence;
3. Provide the parties with the same opportunities to have others present during any complaint proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. However, the Agency may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
4. Provide to the party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
5. Prior to conclusion of the investigation, provide both parties (and their advisors), in an electronic format or a hard copy, an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including evidence upon which the Agency does not intend to rely in reaching a determination regarding responsibility, as well as inculpatory and exculpatory evidence, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence;
6. Following review of the evidence, give the parties at least ten (10) days to submit a written response to the evidence, which the investigator will consider prior to completion of the investigative report;
7. Create an investigative report that fairly summarizes relevant evidence and, at least ten (10) days prior to the time of determination regarding responsibility, send to each party and the

party's advisor, if any, the investigative report in an electronic format or hard copy, for their review and written response; and,

8. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

F. Determination Regarding Responsibility

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

After receipt and review of the investigative report and before reaching a determination regarding responsibility, the decision-maker will afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

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

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

G. Decision-Maker's Written Determination

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

1. Identification of the allegation(s) potentially constituting sexual harassment;
2. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the Agency's policies, employee handbook provisions, and/or code of conduct to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the Agency imposes on the

Respondent, and whether remedies designed to restore or preserve access to the Agency's education program or activity will be provided by the Agency to the Complainant; and,

6. The Agency's procedures and permissible bases for the Complainant and Respondent to appeal.

The Agency will provide the written determination to the parties simultaneously. If the decision is made that there is not sufficient basis to believe that it is more likely than not that the Respondent violated this policy, the Complainant and Respondent will be notified of that determination and informed of other resources that may be available.

If the decision is made that it is more likely than not that the Respondent violated this policy, the decision-maker(s) or the decision-maker's designee shall determine appropriate sanction(s). The determination will include steps to take to prevent recurrence of any such violations, and as appropriate, remedies for the Complainant.

The determination regarding responsibility becomes final either on the date that the Agency provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

H. Possible Sanctions and Remedies

The Agency may implement a range of possible sanctions to a Respondent who is found to have violated this policy and remedies to a Complainant following a determination of responsibility. The range of sanctions include suspension, termination, or other disciplinary measures. The range of remedies include counseling, no-contact orders, or other appropriate remedies that reflect a continuation or addition of supportive measures.

I. Supportive Measures

The Agency may provide to Complainants a range of the supportive measures identified above in Section V. The Agency may, but is not required to, provide Respondent with supportive measures.

J. Appeal

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

The Agency shall offer both parties an appeal from a determination regarding responsibility or from a dismissal of a Formal Complaint. A request for an appeal must be submitted in writing within ten (10) days of issuance of the written determination on responsibility or dismissal of a Formal Complaint and may be based upon any of the following:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter; and,

3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent, that affected the outcome of the matter.

As to all appeals, the Agency shall:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the appeal decision-maker complies with the standards set forth in 34 C.F.R. § 106.45(b)(1)(iii);
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
4. Issue a written decision describing the result of the appeal and the rationale for the result, which shall be issued within thirty (30) days of the filing of the appeal, unless the appeal decision-maker needs additional time; and,
5. Provide the written decision on appeal simultaneously to both parties.

If the appeal decision-maker determines one of the above grounds for appeal is satisfied, the matter may be returned for further review of the investigation report by a new decision-maker(s). If the grounds for appeal relate to the investigation, or warrant additional investigation, the new decision-maker(s) may refer the matter for further investigation before proceeding. Upon further review, the new decision-maker(s) shall utilize the same process as required for all Formal Complaints under this Policy.

K. Timeframe for Determination

The conclusion of the grievance process, including any appeal, shall be done in a reasonably prompt timeframe, which in most cases shall be no more than ninety (90) days from the date the Formal Complaint is received. The Agency may temporarily delay the grievance process or provide for a limited extension of any deadline included in this policy for good cause. "Good cause" shall include, but is not limited to, the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. If the Agency delays the grievance process or extends any deadline, it must provide written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action.

IX. Retaliation Prohibited

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

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct, employee handbook, or other Agency policy violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

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

X. Confidentiality

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

The Agency may not access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional and which are made and maintained in connection with the provision of treatment to the party, unless the Agency obtains the voluntary written consent of the party or the party’s parent or guardian.

XI. Recordkeeping

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

1. Each sexual harassment investigation, including any determination regarding responsibility, any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve access to the Agency’s education program or activity;
2. Any appeal and the result therefrom;
3. Informal resolution and the result therefrom; and
4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process with regard to sexual harassment.

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

With respect to each response, the Agency shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it took measures designed to restore or preserve access to the Agency’s educational program or activity. The documentation of certain

bases or measures does not limit the Agency in the future from providing additional explanations or detailing additional measures taken.

XII. Training

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

The Agency shall ensure investigators receive training on how to create an investigative report that fairly summarizes relevant evidence.

The Agency shall ensure decision-makers receive training on issues of relevance of questions and evidence, including questions and evidence about a Complainant's prior sexual behavior.

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

XIII. Harassment under Other Laws

Other state and federal laws prohibit harassment of employees on the basis of sex, including Title VII and the Wisconsin Fair Employment Act. Employees may bring complaints of such harassment to the Title IX Coordinator. The Title IX Coordinator shall be responsible for addressing such allegations, including conducting an investigation, if appropriate, pursuant to this Policy and Policy 512.

If an employee files a complaint alleging harassment on the basis of sex under state law or Title VII, with or without allegations related to Title IX, the Title IX Coordinator shall consider any appropriate action, including directing the employee to follow any general employee harassment procedure adopted to comply with state law prohibiting harassment based on sex. However, the Title IX Coordinator may determine that it is appropriate to proceed with the complaint under this Title IX Sexual Harassment policy, including resolution of the allegations under the grievance process.

Legal References: Title IX of the Education Amendment of 1972
Title IX regulations, 34 C.F.R. Part 106
Title VII of the Civil Rights Act of 1964
Wis. Stat. §§ 111.31-111.395

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