



Book	Policy Manual
Section	100 Programs
Title	Nondiscrimination in Employment and Contract Practices
Code	104
Status	Active
Adopted	March 27, 2019
Last Revised	September 24, 2014
Last Reviewed	August 26, 2020

### **Authority**

The Board declares it to be the policy of the Intermediate Unit to provide to all persons equal access to all categories of employment, regardless of race, color, age, creed, religion, sex, sexual orientation, gender identity, gender expression, ancestry, national origin, handicap/disability, or genetic information. The Intermediate Unit shall make reasonable accommodations for identified physical and mental impairments that constitute disabilities, consistent with the requirements of federal and state laws and regulations. [\[1\]](#)[\[2\]](#)[\[3\]](#)[\[4\]](#)[\[5\]](#)[\[6\]](#)[\[7\]](#)[\[8\]](#)[\[9\]](#)[\[10\]](#)[\[11\]](#)

The Intermediate Unit shall not discriminate in employment based on an applicant or employee's criminal record, unless the record includes a conviction for an offense that bears such relationship to the employment sought that the Intermediate Unit reasonably concludes that the applicant or employee would present an unacceptable risk to the operation of Intermediate Unit, other employees, students, or members of the public. Certain criminal convictions are identified as precluding employment working directly with children. Case law nevertheless requires that the Intermediate Unit evaluate the criminal conviction. The Intermediate Unit shall conduct an individualized assessment of the risk presented, including the nature of the offense; the time that has passed since the offense; the applicant's employment history before and after the offense, and any period of incarceration; the particular duties of the job sought; the character or employment references provided by the applicant; and any evidence of the applicant's rehabilitation since the conviction. [11]

The Board also declares it to be the policy of this Intermediate Unit to comply with federal law and regulations under Title IX prohibiting sexual harassment, which is a form of unlawful discrimination on the basis of sex. Such discrimination shall be referred to throughout this policy as Title IX sexual harassment. Inquiries regarding the application of Title IX to the Intermediate Unit may be referred to the Title IX Coordinator, to the Assistant Secretary for Civil Rights of the U.S. Department of Education, or both.

The Board directs that the foregoing statement of Board policy be included in each student and staff handbook, and that this policy and related attachments be posted to the Intermediate Unit's website.

The Board requires a notice stating that the Intermediate Unit does not discriminate in any manner, including Title IX sexual harassment, in any Intermediate Unit education program or activity, to be issued to all students, parents/guardians, employment applicants, employees and all unions or professional organizations holding collective bargaining or professional agreements with the Intermediate Unit. All discrimination notices and information shall include the title, office address, telephone number and email address of the individual(s) designated as the Compliance Officer and Title IX Coordinator.

It is imperative that all Intermediate Unit employees, students, vendors and third parties comply with both the spirit and intent of federal and state laws and regulations, court orders and Board policy which prohibit unlawful discrimination. In addition, all administrators, staff and students share a continuing responsibility to conduct themselves in a manner which ensures an environment that is free from discrimination.

#### **Reports of Title IX Sexual Harassment and Other Discrimination and Retaliation**

The Board encourages employees and third parties who **they or others** have been subject to **Title IX sexual harassment, other discrimination or retaliation** to promptly report such incidents to **the building administrator or program supervisor**. **A person who is not an intended victim or target of discrimination but is adversely affected by the offensive conduct may file a report of discrimination.** If the building administrator or program supervisor is the subject of a complaint, the complainant or the individual making the report shall direct the report of the incident to the Title IX Coordinator.

The complainant or the individual making the report may use the **Discrimination/Sexual Harassment/Retaliation Report Form** attached to this policy for purposes of reporting an incident or incidents in writing; however, verbal reports of an incident or incidents shall be accepted, documented and the procedures of this policy and the relevant attachments followed.

The building administrator or program supervisor shall promptly notify the Title IX Coordinator of all reports of discrimination, Title IX sexual harassment or retaliation. The Title IX Coordinator shall promptly contact the complainant regarding the report to gather additional information as necessary, and to discuss the availability of supportive measures. The Title IX Coordinator shall consider the complainant's wishes with respect to supportive measures.

The Title IX Coordinator shall conduct an assessment to determine whether the reported circumstances are most appropriately addressed through the **Discrimination Complaint Procedures** prescribed in Attachment 2 to this policy, or if the reported circumstances meet the definition of Title IX sexual harassment and are most appropriately addressed through the **Title IX Sexual Harassment**

Procedures and Grievance Process for Formal Complaints in Attachment 3, or other Board policies.

The Board directs that complaints of discrimination shall be investigated promptly, and corrective action be taken when allegations are substantiated.

### Disciplinary Procedures when Reports Allege Title IX Sexual Harassment

When a report alleges Title IX sexual harassment, disciplinary sanctions may not be imposed until the completion of the grievance process for formal complaints outlined in Attachment 3. The Intermediate Unit shall presume that the respondent is not responsible for the alleged conduct until a determination has been made at the completion of the grievance process for formal complaints.

**Administrative Leave –** When an employee, based on an individualized safety and risk analysis, poses an immediate threat to the health or safety of any student or other individual, the employee may be removed on an emergency basis. An accused, non-student Intermediate Unit employee may be placed on administrative leave during the pendency of the grievance process for formal complaints, consistent with all rights under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, and in accordance with state law and regulations, Board policy and an applicable collective bargaining agreement or individual contract.

### Confidentiality

Confidentiality of all parties, witnesses, the allegations, the filing of a report and the investigation related to any form of discrimination or retaliation, including Title IX sexual harassment, shall be handled consistent with applicable law and regulations, this policy, the attachments and the Intermediate Unit's legal and investigative obligations. [12][13][14][15]

### Retaliation

No reprisals nor retaliation by the Intermediate Unit or any other person shall occur against any person as a result of good faith charges of discrimination, including (a) reporting or making a formal complaint of any form of discrimination or retaliation, including Title IX sexual harassment; (b) testifying, assisting, participating or refusing to participate in a related investigation, process or other proceeding or hearing; or (c) acting in opposition to practices the person reasonably believes to be discriminatory. A complaint of retaliation shall be handled in the same manner as a complaint of discrimination. [15]

The Intermediate Unit, its employees and others are prohibited from intimidating, threatening, coercing, or discriminating against anyone for actions described above. Individuals are encouraged to contact the Title IX Coordinator immediately if they believe retaliation has occurred.

### Definitions

Complainant shall mean an individual who is alleged to be the victim.

**Respondent shall mean an individual alleged to be the perpetrator of the discriminatory conduct.**

**Discrimination shall mean to treat individuals differently, or to harass or victimize based on a protected classification including race, color, age, creed, religion, sex, sexual orientation, genetic information, ancestry, national origin, marital status, pregnancy, or handicap/disability. Harassment is a form of discrimination based on the protected classifications listed in this policy.**

For the purposes of this policy, **harassment** shall consist of unwelcome conduct such as graphic written, electronic, verbal or nonverbal, **or physical** acts including offensive jokes, slurs, epithets, and name-calling, ridicule or mockery, insults or put-downs, offensive objects or pictures, physical assaults or threats, intimidation, or other conduct that may be harmful or humiliating or interfere with a person's school or school-related performance and which relates to an individual's or group's race, color, age, creed, religion, sex, sexual orientation, gender identity, gender expression, ancestry, national origin, marital status, veteran's status, pregnancy or handicap/disability when:

1. **Submission to such conduct is made explicitly or implicitly a term or condition of an employee's status; or**
2. **Submission to or rejection of such conduct is used as the basis for employment-related decisions affecting an employee; or**
3. Sufficiently severe, persistent or pervasive-that a reasonable person in the complainant's position would find that it creates an intimidating, threatening or abusive educational environment such that it deprives or adversely interferes with or limits an individual or group of the ability to participate in or benefit from the services, activities or opportunities offered by the Intermediate Unit. **[6]**

**Sexual harassment** is a form of discrimination on the basis of sex and is subject to this policy. For the purposes of this policy, **sexual harassment** shall consist of unwelcome sexual advances, requests for sexual favor, and other inappropriate verbal, nonverbal, written, graphic or physical conduct of a sexual nature when:

1. Submission to such conduct is made explicitly or implicitly a term or condition of an employee's status; or
2. Submission to or rejection of such conduct is used as the basis for employment-related decisions affecting an employee; or
3. Such conduct is sufficiently severe, persistent, or pervasive that a reasonable person in the complainant's position would find that it unreasonably interferes with the complainant's performance at work or otherwise creates an intimidating, hostile, or offensive working environment such that it alters the complainant's working conditions.

#### **Definitions Related to Title IX Sexual Harassment**

**Formal complaint shall mean a document filed by a complainant or signed by the Title IX Coordinator alleging Title IX sexual harassment and requesting that the Intermediate Unit investigate the allegation under the grievance process for formal complaints. The authority for the Title IX Coordinator to sign a formal complaint does not make the Title IX Coordinator a party in the grievance process for formal complaints. The phrase "document filed by a complainant" refers to 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.[14][16]

Supportive measures shall mean nondisciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.[16]

Supportive measures shall be designed to restore or preserve equal access to the educational program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or to deter sexual harassment. Supportive measures may include, but are not limited to:[16]

1. Counseling or Employee Assistance Program.
2. Extensions of deadlines or other course-related adjustments.
3. Modifications of work or class schedules.
4. Campus escort services.
5. Mutual restrictions on contact between the parties.
6. Changes in work locations.
7. Leaves of absence.
8. Increased security.
9. Monitoring of certain areas of the campus.
10. Assistance from domestic violence or rape crisis programs.
11. Assistance from community health resources including counseling resources.

Title IX sexual harassment means conduct on the basis of sex that satisfies one or more of the following:[16]

1. An Intermediate Unit employee conditioning the provision of an aid, benefit, or Intermediate Unit service on an individual's participation in unwelcome sexual conduct, commonly referred to as quid pro quo sexual harassment.
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to an Intermediate Unit education program or activity.

Sexual assault, dating violence, domestic violence or stalking.

Dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship is determined by the following factors:

1. Length of relationship.
2. Type of relationship.
3. Frequency of interaction between the persons involved in the relationship.

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

receiving federal funding, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Sexual assault means a sexual offense under state or federal law that is classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.[17]

Stalking, under Title IX means stalking on the basis of sex, for example when the stalker desires to date a victim. Stalking means to engage in a course of conduct directed at a specific person that would cause a reasonable person to either:

1. Fear for their safety or the safety of others.
2. Suffer substantial emotional distress.

Such conduct must have taken place during an Intermediate Unit education program or activity and against a person in the United States to qualify as sexual harassment under Title IX. An education program or activity includes the locations, events or circumstances over which the Intermediate Unit exercises substantial control over both the respondent and the context in which the harassment occurs. Title IX applies to all of an Intermediate Unit's education programs or activities, whether such programs or activities occur on-campus or off-campus. [13][14][16]

### Delegation of Responsibility

In order to maintain a program of nondiscrimination practices that is in compliance with applicable laws and regulations, the Board designates the Executive Director or the Executive Director's designee as the Compliance Officer/**Title IX Coordinator** for the Intermediate Unit. **Contact information for the Compliance Officer/Title IX Coordinator is available on the Intermediate Unit website, or by contacting the Intermediate Unit Office at 252 Waterford Street, Edinboro, PA 16412, 814-734-5610.**

The Compliance Officer shall publish and disseminate this policy and complaint procedure at least annually to students, parents/guardians, employees and the public to notify them of where and how to initiate complaints under this policy. Nondiscrimination statements shall include the position, office address and telephone number of the Compliance Officer.

Each supervisor, director, faculty member and/or administrator shall be responsible within his/her respective area for the implementation, dissemination and explanation of this Board policy. The Compliance Officer shall provide assistance in implementation, dissemination and explanation of the policy.

The Compliance Officer and Title IX Coordinator shall fulfill designated responsibilities to ensure adequate nondiscrimination procedures are in place, to recommend new procedures or modifications to procedures and to monitor the implementation of the Intermediate Unit's nondiscrimination procedures in the following areas, as appropriate:

1. Review - Review of personnel practices and actions for discriminatory bias and compliance with laws against discrimination to include monitoring and

recommending corrective measures when appropriate to written position qualifications, job descriptions and essential job functions; recruitment materials and practices; procedures for screening applicants; application and interviewing practices for hiring and promotions; Intermediate Unit designed performance evaluations; review of planned employee demotions, non-renewal of contracts, and proposed employee disciplinary actions up to and including termination.

2. Training - Provide training for supervisors and staff to prevent, identify and alleviate problems of employment discrimination.
3. Resources - Maintain and provide information to staff on resources available to alleged victims in addition to the school complaint procedure or Title IX procedures, such as making reports to the police, available supportive measures such as assistance from domestic violence or rape crisis programs, and community health resources including counseling resources.
4. Reports/Formal Complaints - Monitor and provide technical assistance to individuals involved in managing informal reports and formal complaints.

### Guidelines

#### Title IX Sexual Harassment Training Requirements

The Compliance Officer and Title IX Coordinator, investigator(s), decision-maker(s), or any individual designated to facilitate an informal resolution process related to Title IX sexual harassment shall receive the following training, as required or appropriate to their specific role:

1. Definition of sexual harassment.
2. Scope of the Intermediate Unit's education program or activity, as it pertains to what is subject to Title IX regulations.
3. How to conduct an investigation and grievance process for formal complaints, including examination of evidence, drafting written determinations, handling appeals and informal resolution processes, as applicable.
4. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias.
5. Use of relevant technology.
6. Issues of relevance including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
7. Issues of relevance, weight of evidence and application of standard of proof and drafting investigative reports that fairly summarize relevant evidence.
8. How to address complaints when the alleged conduct does not qualify as Title IX sexual harassment but could be addressed under another complaint process or Board policy.

All training materials shall promote impartial investigations and adjudications of formal complaints of Title IX sexual harassment without relying on sex stereotypes.[13][14]

All training materials shall be posted on the Intermediate Unit's website.

### Reports of Discrimination

Any reports of discrimination that are reviewed by the Title IX Coordinator and do not meet the definition of Title IX sexual harassment but are based on race, color, age, creed, religion, sex, sexual orientation, ancestry, genetic information, national origin, marital status, pregnancy or handicap/disability shall follow the Discrimination Complaint Procedures in Attachment 2 to this policy.

### Reports of Title IX Sexual Harassment

Any reports deemed by the Title IX Coordinator to meet the definition of sexual harassment under Title IX shall follow the Title IX Sexual Harassment Procedures and Grievance Process for Formal Complaints in Attachment 3 to this policy.

### Disciplinary Consequences

An employee who violates this policy shall be subject to appropriate disciplinary action consistent with the applicable Board policy, collective bargaining agreement and individual contract, up to and including dismissal and/or referral to law enforcement officials.

### Reporting to Outside Agencies

Any complainant may have the right to file complaints of discrimination with federal, state or local regulatory agencies, in addition to the reporting procedures provided in this policy. Contact information for outside agencies shall be available in the Intermediate Unit's administrative offices.



## Legal

17. Pol. 806
16. Pol. 317
15. 20 U.S.C. 1092
14. 34 U.S.C. 12291
13. 34 C.F.R. Part 106
12. 34 C.F.R. Part 99
11. Erie County Human Relations Ordinance No. 45, 2018
1. 20 U.S.C. 1681 et seq
2. 29 U.S.C. 206
3. 29 U.S.C. 621 et seq
4. 29 U.S.C. 794
5. 42 U.S.C. 1981 et seq
6. 42 U.S.C. 2000e et seq
7. 42 U.S.C. 2000ff et seq
8. 42 U.S.C. 12101 et seq
9. 43 P.S. 336.3
10. 43 P.S. 951 et seq
- 29 CFR Parts 1600-1691
- 16 PA Code 44.1 et seq
- 28 CFR 35.140
- 28 CFR Part 41

104-Attach.doc (26 KB)