

Regulation Code: 1710/4021/7230-R&P(1) Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedure

The procedures below are designed to address reports of sex discrimination and sex-based harassment in violation of Title IX and Policy 1710/4021/7230. All incidents of conduct that could constitute sex discrimination or sex-based harassment under that policy are to be reported in accordance with these procedures, including situations where the incidents may also constitute violations of other Board policies or standards of conduct. Conduct that may also constitute a violation of other Board policies or standards of conduct may be investigated and addressed pursuant to the usual procedures for addressing such violations, whether or not there is also an investigation and adjudication under the Title IX process described below.

This Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedure is currently being implemented in WCPSS to address reports of sex discrimination and sex-based harassment in violation of Title IX and Policy 1710/4021/7230. This document may be modified or updated as appropriate, and any modifications or updates will be incorporated here.

A. Definitions

1. Sexual Discrimination

Sex discrimination shall have the definition set forth in Policy 1710/4021/7230.

2. Sex-based Harassment

Sex-based harassment shall have the definition set forth in Policy 1710/4021/7230.

3. Report

A report is an oral or written notification that an individual is an alleged or suspected perpetrator or victim of sex discrimination or sex-based harassment.

Making a report initiates the interactive process with the complainant described below. No disciplinary action will be taken against a respondent for sex discrimination or sex-based harassment based on a report alone under Policy 1710/4021/7230 and this procedure.

4. Formal Complaint

A formal complaint is a document signed and filed with the Title IX coordinator by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that school officials investigate the allegation(s). Filing a formal complaint initiates the Title IX process set forth herein.

5. Complainant

A complainant is:

- a. A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination or sex-based harassment under Title IX; or

- b. A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination or sex-based harassment under Title IX and who was participating or attempting to participate in the school system's education program or activity at the time of the alleged sex discrimination or sex-based harassment.

6. Respondent

The respondent is the person who is alleged to have violated the school system's prohibition on sex discrimination or sex-based harassment.

7. Parties

The parties are the complainant(s) and respondent(s).

8. Title IX Coordinator

The Title IX coordinator is a school official who is designated to coordinate the school system's response to allegations of sex discrimination or sex-based harassment. Contact information for the Title IX coordinators is posted on the school system's website and set forth below:

For allegations or reports that a student has engaged in sex discrimination or sex-based harassment:

Dr. Gia Hoke, *Title IX Coordinator for Students*
Region 1: Northern, Northwestern, Western, Southwestern, Southeastern
Senior Administrator, Office of Equity Affairs
Phone: 919-694-7637
Email: ghoke@wcpss.net

Billy Moore, *Title IX Coordinator for Students*
Region 2: Central, Eastern, Northeastern, Southern
Senior Administrator, Office of Equity Affairs
Phone: 919-694-7180
Email: bmoore4@wcpss.net

For allegations or reports that an employee, volunteer or contractor has engaged in sex discrimination or sex-based harassment:

Sally Pitofsky, *Title IX Coordinator for Employees*
Senior Administrator for Compliance – Employee Relations
Phone: 919-533-7221
Email: spitofsky@wcpss.net

9. Supportive Measures

Supportive measures are individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant to:

- a. Restore and preserve that party's access to the school system's education

program or activity, including measures that are designed to protect the safety of the parties or the recipient's educational environment; or

- b. Provide support during the school system's complaint procedures as required by Title IX or during the informal resolution proceed described below.

Supportive measures available to the parties include, but are not limited to, counseling, mental health services referral, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual restrictions on contact between the parties, changes in work locations or school assignment, leaves of absence, increased security and monitoring, and other similar measures determined by school officials to be necessary to protect the safety or educational or employment.

10. Remedies

Remedies are measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient's education program or activity limited or denied by sex discrimination or sex-based harassment. These measures are provided to restore or preserve that person's access to the recipient's education program or activity after a recipient determines that sex discrimination or sex-based harassment occurred.

11. Disciplinary Sanctions

Disciplinary sanctions are consequences imposed on a respondent following a determination under these complaint procedures that the respondent violated the school system's prohibition on sex discrimination or sex-based harassment.

12. Days

Days are calendar days unless specified otherwise.

13. Student(s)

Student(s) means the student and/or the student's parent or legal guardian unless the context clearly indicates otherwise.

14. Student with a Disability

A student with a disability is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(9)(B), 20(B), or a child with a disability as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3).

15. Pregnancy or related conditions

Pregnancy or related conditions means:

- a. Pregnancy, childbirth, termination of pregnancy, or lactation;
- b. Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- c. Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

16. Program or activity or Program

Program or activity or program means all of the operations of the school system.

17. Relevant

Relevant means related to the allegations of sex discrimination or sex-based harassment under investigation as part of these complaint procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination or sex-based harassment occurred. Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination or sex-based harassment occurred.

18. Retaliation

Retaliation means intimidation, threats, coercion, or discrimination against any person by the school system, a student, an employee or other person authorized by the school system to provide aid, benefit, or service under the school system's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing pursuant to this procedure, including in an informal resolution process, a complaint procedure, or any other actions taken by the school system pursuant to these procedures.

Peer retaliation means retaliation by a student against another student.

B. Reporting Sex Discrimination or Sex-Based Harassment

Students who believe they are a victim of sex discrimination or sex-based harassment are encouraged to report the matter to their principal or to the appropriate Title IX Coordinator. Reports may also be made to a teacher, counselor, assistant principal, teacher assistant, or any other school employee.

Employees who believe they are a victim of sex discrimination or sex-based harassment occurring in the work environment are encouraged to report the matter to their principal/supervisor or to the appropriate Title IX Coordinator.

Any employee or member of the Board of Education who has information about conduct that reasonably may constitute sex discrimination or sex-based harassment under Title IX must notify the appropriate Title IX coordinator.

Any doubt about whether particular conduct may constitute sex discrimination or sex-based harassment should be resolved in favor of reporting the conduct.

All other members of the school community are strongly encouraged to report any act that may constitute an incident of sex discrimination or sex-based harassment to the school principal, the appropriate Title IX coordinator, or the superintendent.

C. School Officials' Response to Reports of Sex Discrimination or Sex-Based Harassment

1. Initial Response by Title IX Coordinator

Upon receiving a report of conduct that reasonably may constitute sex

discrimination or sex-based harassment, the appropriate Title IX coordinator shall promptly contact the complainant within three days, excluding weekends and holidays, absent extenuating circumstances. If the complainant is a student, the complainant's parent or guardian should be contacted confidentially unless, in the exercise of good judgment, the coordinator determines that parental involvement is not necessary based on the nature of the offense, the student's age, the wishes of the student, and other relevant circumstances. The Title IX coordinator shall also notify the principal of the report and, if an employee is the complainant or respondent, the senior director of employee relations or designee. If the complainant is unknown, the Title IX coordinator shall promptly contact the individual who reported the conduct, to provide information regarding the complaint and informal resolution process, and to seek additional information regarding the report.

When contacting the complainant (and parent or guardian), the Title IX coordinator shall discuss and offer supportive measures, provide information regarding the process of filing a formal complaint and the steps that will follow the filing of a formal complaint, provide information regarding the informal resolution process, and explain the process of investigating potential violations of any other Board policies or provisions of the Code of Student Conduct that may be applicable. The Title IX coordinator shall document the initial response and discussion for any report.

2. Title IX Coordinator Arranges Implementation of Supportive Measures

After considering the complainant's wishes, the Title IX coordinator shall arrange the effective implementation of appropriate supportive measures unless, in the exercise of good judgment, the Title IX coordinator determines that supportive measures should not be provided. If supportive measures are not provided to the complainant, the Title IX coordinator shall document the decision regarding supportive measures and the reasons for that decision. The documentation shall address why the decision is not deliberately indifferent to known sex discrimination or sex-based harassment.

3. Removal of Respondent from School or Employment

a. Emergency Removal of Students

Any student respondent is subject to removal from the school system's education program and activities, or any part of the program or activities, on an emergency basis if the school leadership, in consultation with the Title IX coordinator, conducts an individualized safety and risk analysis, determines that removal is justified because the person poses an imminent and serious threat to the health or safety of any person arising from the allegations of sexual harassment, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. The respondent shall receive notice of the removal and an opportunity to challenge the decision by written appeal to Equity Affairs, with the review of the decision to be made by an individual who is not the Title IX coordinator, immediately following the removal.

If the respondent is a student with a disability, the Title IX coordinator shall consult with one or more members of the student's IEP or 504 team in connection with the individualized safety and risk analysis and consideration of removal under this provision.

The emergency removal may take place regardless of whether a formal complaint has been made. However, any such removal must be consistent with federal and state law, including any applicable law protecting the rights of individuals with disabilities.

The Title IX coordinator shall document all emergency removal decisions under this subsection, including the immediate threat to health or safety that justified the removal.

b. Removal of Employees

An employee may be placed on administrative leave during the pendency of the Title IX process, if consistent with state law and in accordance with any applicable requirements of state law.

4. Supportive Measures

Supportive measures will be available to both the complainant and respondent before or after the filing of a complaint or where no complaint has been filed. Supportive measures will remain confidential to the extent that maintaining such confidentiality does not impair the ability to provide the supportive measures. The Title IX coordinator is responsible for coordinating the effective implementation of supportive measures.

If the complainant or respondent is a student with a disability, the Title IX coordinator shall consult with one or more members of the student's IEP or 504 team in connection with consideration and implementation of supportive measures.

D. Making a Complaint

A formal complaint initiates the Title IX process. A formal complaint may be filed by individuals who believe they have been subject to sex discrimination or sex-based harassment, or by the appropriate Title IX coordinator. A parent or guardian may act on behalf of a student complainant. In accordance with law, only the complainant and the Title IX coordinator may initiate the Title IX process; no other individuals or school officials shall have authority to do so.

The complaint should contain (1) include the name and address of the complainant and the student's parent or guardian if the complainant is a minor student, (2) describe the alleged sex discrimination or sex-based harassment, (3) request an investigation of the matter, and (4) be signed by the complainant or otherwise indicate that the complainant is the person filing the complaint or be signed by the Title IX coordinator if the Title IX coordinator files the formal complaint.

Complaint forms may be obtained from a Title IX coordinator or on the school system website.

Upon receipt of a complaint of sex discrimination or sex-based harassment, the Title IX coordinator shall engage in an interactive process with the complainant, consider the provision of supportive measures in light of the complainant's wishes, and provide supportive measures as appropriate, unless the Title IX coordinator has already done so in response to an initial report of the same allegation of sex discrimination or sex-based harassment.

If the complainant declines to make a complaint, the Title IX coordinator shall determine on a case-by case basis, and in consultation with the school attorney and the other Title

IX coordinator, as appropriate, whether to initiate a complaint to move forward with the Title IX process. In making this fact-specific determination, the Title IX coordinator shall consider, at a minimum, the following factors:

1. The complainant's request not to proceed with initiation of a complaint;
2. The complainant's reasonable safety concerns regarding initiation of a complaint;
3. The risk that additional acts of sex discrimination or sex-based harassment would occur if a complaint is not initiated;
4. The severity of the alleged sex discrimination or sex-based harassment, including whether the discrimination or harassment, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination or harassment and prevent its recurrence;
5. The age and relationship of the parties, including whether the respondent is an employee;
6. The scope of the alleged sex discrimination or sex-based harassment, including information suggesting a pattern, ongoing sex discrimination or sex-based harassment, or sex discrimination or sex-based harassment alleged to have impacted multiple individuals;
7. The availability of evidence to assist in determining whether sex discrimination or sex-based harassment occurred; and
8. Whether the sex discrimination or sex-based harassment could be ended and its recurrence prevented without initiating the Title IX process.

If, after consideration of these and other relevant factors, the Title IX coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other person, or that the conduct as alleged prevents WCPSS from ensuring equal access on the basis of sex to its education program or activity, the Title IX coordinator may initiate a complaint.

The Title IX coordinator shall document the decision of whether to proceed with a complaint and the reasons for that decision. If the Title IX coordinator decides to initiate a complaint, The Title IX coordinator shall notify the complainant prior to doing so and shall appropriately address reasonable concerns about the complainant's safety or the safety of others.

Should there be a determination not to proceed with a complaint, but should the circumstances indicate a potential violation of any other Board policy or provision of the Code of Student Conduct, then the Title IX coordinator will refer the matter to appropriate staff in accordance with those policies or provisions.

E. Timeliness of Title IX Process

School officials shall make a good faith effort to conduct a fair, impartial Title IX process in a timely manner designed to provide all parties with a prompt and equitable resolution. It is expected that in most cases, the Title IX process will be concluded through the adjudication phase by the decision-maker within 90 days after filing the formal complaint. The school system reserves the right to extend this time frame, or any of the time frames described below for major stages of this complaint procedure (e.g., initial review and evaluation of complaint; investigation; adjudication; and appeal), for good cause and with written notice to the parties that includes the reason for the delay. Good cause may include but is not limited to the absence of the parties or witnesses, concurrent law enforcement activity, the need for language assistance or accommodation of disabilities, or a reasonable request for additional time by any party.

The Title IX coordinator or designee shall make reasonable efforts to keep the complainant and respondent apprised of progress being made during any period of

delay.

F. Students with Disabilities

If the complainant or respondent is a student with a disability, the Title IX coordinator shall consult with one or more members of the student's IEP or 504 team throughout the pendency of the Title IX investigation and adjudication process.

G. Title IX Complaint Process: Part I – Initial Review and Evaluation of Complaint

1. The first step in the complaint process is for the appropriate Title IX coordinator to review the complaint to confirm it implicates these procedures. It is expected that in most circumstances, this initial review will be completed within five days of the complaint being made.

The Title IX coordinator may dismiss a complaint of sex discrimination or sex-based harassment made through these complaint procedures for any of the following reasons, and at any time following receipt of a complaint:

- a. The school system is unable to identify the respondent after taking reasonable steps to do so;
 - b. The respondent is not participating in the school system's education program or activity and is not employed by the recipient;
 - c. The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX coordinator declines to initiate a complaint, and the Title IX coordinator determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination or sex-based harassment even if proven; or
 - d. The Title IX coordinator determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination or sex-based harassment. Prior to dismissing the complaint for this reason, the Title IX coordinator must make reasonable efforts to clarify the allegations with the complainant.
2. Upon dismissal, the Title IX coordinator must promptly notify the complainant of the basis for the dismissal and that a dismissal may be appealed and provide the complainant with an opportunity to appeal the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, the Title IX coordinator must also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously, if notification is in writing, and must also notify the respondent that the dismissal may be appealed as provided in Section J.
 3. Following dismissal, the Title IX coordinator or designee must:
 - a. Offer supportive measures to the complainant as appropriate;
 - b. Offer supportive measures to the respondent as appropriate if the respondent has been notified of the allegations and the dismissal is based on the voluntary withdrawal of allegations in the complaint or a determination that the conduct alleged, even if proven, would not constitute sex discrimination or sex-based harassment (as provided in part 1.a and 1.b of this section.); and

- c. Require the Title IX coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination or sex-based harassment does not occur, continue or recur within the school's systems program or activity.

The Title IX coordinator shall refer the matter that was the subject of the dismissed complaint to the principal or appropriate staff for further action as warranted.

H. Title IX Complaint Process: Part II - Investigation

1. Principles for Investigations

The following general principles will apply to all investigations conducted pursuant to this procedure in response to complaints of sex discrimination or sex-based harassment:

- a. During the pendency of the complaint procedures, the school system will treat complainants and respondents equitably.
- b. No person with a conflict of interest or bias for or against the complainant or respondent individually or generally shall act as the Title IX coordinator, investigator, or decisionmaker.
- c. The respondent will be presumed not responsible for the alleged sex discrimination or sex-based harassment until a determination is made at the conclusion of the complaint procedures.
- d. As outlined with specificity elsewhere in the procedures, each of the major stages of the complaint procedure should be completed within reasonably prompt timeframes. Reasonable extensions of timeframes may be made on a case-by-case basis for good cause. If an extension is necessary, the parties will receive written notice of the extension and the reason for the extension prior to the end of the original timeframe. School system officials shall make reasonable efforts to keep the parties apprised of progress being made during any extension period. Delays that interfere with the exercise of the party's legal rights are not permitted.
- e. School officials involved in the complaint procedures shall take reasonable steps to protect the privacy of the parties and witnesses throughout the complaint procedures, including requiring the parties and witnesses to maintain the confidentiality of information and evidence obtained solely through the complaint proceedings. However, no steps will be imposed that restrict the ability of the parties to (1) obtain and present evidence, including by speaking to witnesses; (2) consult with their family members, confidential resources, or advisors; or (3) otherwise prepare for or participate in the complaint procedures.
- f. The parties are prohibited from retaliation, as defined above, in exercising their rights under this procedure.
- g. The parties are prohibited from knowingly making false statements or knowingly submitting false information. (See Policy 4309, Student Code of Conduct (Level II-1), and Policy 7300, Staff Responsibilities and Code of Ethics.)

- h. The parties may have an advisor of their choice present during the proceedings, who may be, but is not required to be, an attorney.

2. Step 1 – Notice of Allegations

- a. Upon initiation of the school system’s complaint procedures, the appropriate Title IX coordinator must provide notice of the allegations to the parties whose identities are known. The notice must include:
 - 1) The school system’s complaint procedures and any informal resolution process;
 - 2) Sufficient information available at the time to allow the parties to respond to the allegations. Sufficient details include, to the extent known to the school system, the following:
 - a) the identities of the parties involved, if known;
 - b) the conduct alleged to constitute sex discrimination or sex-based harassment under Title IX; and
 - c) the date(s) and location(s) of the alleged incident(s), if known;
 - 3) a statement that retaliation is prohibited; and
 - 4) A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence as set out below; and if the school system provides a description of the evidence, the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.
- b. If during the investigation, the school system decides to investigate additional allegations of sex discrimination or sex-based harassment by the respondent toward the complainant that are not included in the initial notice provided above or that are included in a complaint that is consolidated as described below, the appropriate Title IX coordinator must provide notice of the additional allegations to the parties whose identities are known.

3. Step 2 – Initiating the Investigation

If the complaint may proceed, the Title IX coordinator shall notify the appropriate investigator or investigators, who shall investigate the complaint. This procedure shall refer to a single investigator; however, in appropriate circumstances there may be multiple individuals designated to serve as investigators.

- a. The investigator shall not be a party to the complaint under investigation. The investigator of a complaint is ordinarily determined as described below; however, the Title IX coordinator, in consultation with the superintendent or designee or the board attorney, may determine that conflict of interest, the appearance of bias, or other individual circumstances warrant the assignment of a different investigator.
 - 1) If the respondent is a student, the investigator is the principal or designee of the school with jurisdiction over the incident.

- 2) If the respondent is an employee or applicant for employment, the investigator is the senior director of employee relations or designee.
 - 3) If the respondent is neither a student nor an employee/applicant for employment, the senior director of employee relations or designee shall be the investigator.
 - 4) Notwithstanding the above designations, (a) if the respondent is the senior director of employee relations, the superintendent or designee shall investigate the complaint; or (b) if the respondent is the superintendent or a member of the Board, the Title IX coordinator shall immediately notify the Board chair (or vice chair, if the allegation is against the Board chair) who shall direct the Board attorney to investigate, unless the Board chair or vice chair determines that outside counsel should be engaged to investigate.
 - 5) The investigator is authorized to utilize other district personnel or school administrators in connection with conducting the investigation.
- b. The investigator may request assistance from the appropriate Title IX coordinator to conduct the investigation.
 - c. The appropriate Title IX coordinator and the investigator shall jointly assess the need for supportive measures for either party. Supportive measures provided to the complainant or respondent will be maintained as confidential to the extent that maintaining such confidentiality does not impair the ability to provide the supportive measures.
 - d. The investigator shall explain the process of the investigation to the complainant and respondent.
4. Step 3 – Conducting the Investigation

The investigator is responsible for gathering evidence sufficient to reach a determination of whether the allegations in the complaint are true and whether the facts as determined by the investigator establish that sex discrimination or sex-based harassment as defined in policy occurred. In so doing, the investigator shall adequately, reliably, and impartially investigate the complaint. The investigator must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

- a. The investigator shall interview all individuals who may have relevant information, including (1) the complainant; (2) the respondent; (3) individuals identified by the complainant or respondent as witnesses with relevant information to the incident or expert witnesses; and (4) any other individuals as determined by the investigator to potentially have relevant information. Prior written notice shall be provided to a party whose participation is invited or expected for any investigative interview or meeting. The investigator shall provide the complainant and respondent an equal opportunity to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.
- b. The investigator shall ensure that the burden of conducting an investigation that gathers sufficient evidence to determine whether sex discrimination or sex-based harassment has occurred rests on the school system and not on the

complainant or respondent.

- c. The investigator shall review and conduct an objective evaluation of all evidence gathered through the investigation – including both inculpatory and exculpatory evidence - and determine what evidence is relevant and what evidence is impermissible regardless of relevance. Credibility determinations shall not be based on a person's status as a complainant, respondent, or witness.

The following types of evidence are impermissible, even if relevant:

- 1) Evidence that is protected under a privilege as recognized by Federal or State law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privileged or confidentiality;
 - 2) A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the school system obtains that party's or witness's voluntary, written consent for use in the school system's complaint procedures; and
 - 3) Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.
- d. The complaint and the investigation will be kept confidential to the extent possible. Information may be shared only with individuals who need the information in order to investigate and address the complaint appropriately and those with a legal right to access the information. Any requests by the complainant or respondent for further confidentiality will be evaluated within the context of the legal responsibilities of the school system.

5. Step 4 – Investigative Report and Opportunity to Review Evidence

- a. The investigator shall prepare an investigative report that fairly summarizes the relevant evidence.
- b. Before completing the investigative report, the investigator shall send to each party and the party's advisor, if any, in hard copy or electronically, all the evidence collected which is directly related to the allegations raised in the formal complaint. The parties shall have 10 days to submit a written response for the investigator's consideration before the investigator finalizes the investigative report.
- c. Following the parties' opportunity to respond to the written evidence, the investigator shall finalize the investigative report, including a recommendation on the question of responsibility and any recommended disciplinary sanction.

The investigative report shall also include a description of the procedural steps taken, starting with the receipt of the formal complaint and continuing through the preparation of the investigative report, and including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence.

- d. The investigator shall provide a copy of the investigative report to each party and the party's advisor, if any, for their review and written response. The parties shall have 10 days to provide a written response to the investigative report.
- e. The investigator shall provide to the decision-maker a copy of the investigative report, the relevant evidence, and the parties' written responses to the report.

6. Informal Resolution Process

Informal resolution processes may be available to resolve some complaints of sex discrimination or sex-based harassment without a full investigation and adjudication. Informal resolution may not be used to resolve complaints alleging that an employee sexually harassed a student or where such process would conflict with Federal, State, or local law. Further, the school system may decline informal resolution after determining that the alleged conduct would present a future risk of harm to others.

The Title IX coordinator, or other school official in consultation with the Title IX coordinator, may offer the parties an informal process to resolve a complaint at any time prior to reaching a final determination regarding responsibility. Before using an informal resolution process, school officials must ensure that both parties have given voluntary, informed, written consent to attempt informal resolution. Accordingly, the Title IX coordinator shall:

- a. provide the parties (including the parent of a minor) a written notice disclosing:
 - 1) the allegations;
 - 2) the nature and requirements of the informal resolution process, including that if the parties agree to a resolution of the matter, the agreement precludes either party from resuming a complaint process arising from the same allegations;
 - 3) any consequences that could result from participating in the informal resolution process, including whether records will be maintained and could be shared; and
 - 4) information 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 complaint process; and
- b. obtain the parties' voluntary, written consent to the informal resolution process.

School officials shall never condition an individual's enrollment, employment, or other rights on an agreement to waive the individual's right to investigation and adjudication of a complaint.

Any agreement reached by the parties through informal resolution may include measures that are designed to restore or preserve the parties' equal access to the

education program and activities, including measures that may be punitive or disciplinary in nature.

Any informal process should be completed within a reasonable period of time, not to exceed 60 days from the complaint unless special circumstances necessitate more time.

I. Title IX Complaint Process: Part III – Determination

The superintendent or designee (hereinafter “superintendent”) shall serve as the decision-maker. In general, for Title IX human resources matters, the decision-maker will be the assistant superintendent for human resources, and for Title IX student matters, the decision-maker will be the area superintendent. The decision-maker shall provide for the exchange of questions between the parties and a decision on responsibility in a manner consistent with state law and as provided below.

1. Step 1 – Exchange of Questions and Answers

After the parties are sent the investigative report, the decision-maker shall (1) provide the parties an opportunity to submit a reasonable number of written, relevant questions that the party wants asked in writing of any other party or witness, (2) provide each party with the answers, and (3) allow for additional, limited follow up questions from each party in accordance with a reasonably prompt time frame established by the decision-maker. The parties shall submit their initial set of written questions to the decision-maker within 10 days of the issuance of the investigative report.

The decision-maker shall determine whether the number and scope of questions are reasonable. Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

2. Step 2 – Student’s Opportunity to Request a Hearing

In cases where the respondent is a student, where the recommended discipline by the investigator is for a long-term suspension or expulsion, and where the student has not already received the equivalent level of discipline (such as a long term suspension or expulsion) pursuant to other provisions of the Code of Conduct for the same conduct at issue in the Title IX investigation, after the investigative report has been sent to the parties, both parties shall have three school business days to request a hearing. If either party requests a hearing, the long-term suspension hearing procedures described in policy 4300, Due Process, and 4300-R&P shall be followed, except that (1) both parties shall have the right to participate in the hearing to the extent required by Title IX; (2) all the evidence sent to the parties pursuant to subsection F.5.b above will be made available at the hearing to give each party equal opportunity to refer to such evidence during the hearing; and (3)

prior to the hearing, both parties shall have a limited opportunity to submit and respond to written questions and follow-up questions as provided above.

3. Step 3 – Decision on the Question Regarding Responsibility

Following the exchange of questions and/or hearing as described above, the decision-maker shall decide the question regarding responsibility, any disciplinary action, and any other measures the decision-maker deems appropriate. The decision-maker shall consider all the relevant evidence objectively, including evidence in the investigative report, any testimony of witnesses at the hearing, if one was held, and any additional information provided by the parties through the exchange of questions and responses as provided in subsection G.2 above.

Based on an objective evaluation of the evidence, the decision-maker shall determine whether the preponderance of the evidence supports a finding that the respondent is responsible for sexual harassment in violation of Board policy, and if so, what disciplinary sanction will be imposed. In addition to any disciplinary sanction, the decision-maker will determine whether any additional remedies will be provided to the complainant if the respondent is found responsible. Remedies must be designed to restore or preserve equal access to educational programs or activities or the workplace.

4. Step 4 – Written Determination Regarding Responsibility

The decision-maker shall issue a written determination regarding responsibility simultaneously to both parties that includes:

- a. identification of the allegations potentially constituting sexual harassment under Board policy;
- b. 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;
- c. findings of fact supporting the determination;
- d. conclusions regarding the application of Board policy and/or the Code of Student Conduct or expected standards of employee behavior to the facts;
- e. a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent (which may be a recommendation to the Board for discipline that is beyond the authority of the superintendent or other decision-maker), and whether remedies designed to restore or preserve equal access to the school system's education program and activities will be provided to the complainant;
- f. the procedures and permissible bases for the complainant and respondent to appeal; and

- g. any other notices that are required to accompany the decision under state law, such as when the superintendent imposes a long-term suspension or recommends dismissal of a teacher.

J. Title IX Complaint Process: Part IV – Appeal

1. Notice of the Appeal

In all appeals, the other party will be notified in writing when an appeal is filed and be provided a copy of the appeal.

2. Appeal of Dismissal

Either party may appeal a dismissal of a complaint by submitting a request in writing to the superintendent within three school business days of receiving notice of the dismissal, unless the party is entitled to a longer appeal period under state law or Board policy. Any longer appeal period applicable to one party shall apply equally to the other party.

- a. The grounds for appeal of a dismissal may be 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 complaint was dismissed, that could affect the outcome of the matter;
 - 3) the Title IX coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome of the matter, which must be stated with particularity in the written appeal; or
 - 4) any other basis provided by law or Board policy governing appeals to the Board.
- b. The Board will hear the appeal of a dismissal. Unless otherwise required by law, the Board may designate a panel of two or more Board members to hear and act on behalf of the Board.
- c. Appeal procedures will be implemented equally for both parties and will follow any applicable procedures in policy or state law, modified as necessary to allow equal participation of the parties.
- d. After the notice of appeal is provided, both parties will be given 10 days to submit a written statement in support of, or challenging, the outcome. If the basis of the appeal is newly available evidence affecting the outcome, the party shall submit such evidence or a summary of such evidence along with the party's written statement.
- e. The Title IX coordinator will compile the record of appeal for the Board, including the statements and any material submitted by the parties. The Title IX coordinator may include a statement by the Title IX coordinator in response to the written statements or materials submitted by the parties. Any statement by the Title IX coordinator that is submitted to the Board shall also be provided to the parties.
- f. The Board will review the record and the written statement of the parties submitted on appeal, determine whether additional information is needed from

any party, and take any other steps that the Board determines to be appropriate or that is required by state law in order to respond to the appeal.

- g. After considering the record and written statements of the parties, the Board will determine whether the grounds for the appeal have been substantiated. If substantiated, the Board will remand for further investigation pursuant to this complaint procedure, or such other action as the board determines is necessary.
- h. The Board will provide a written decision describing the results of the appeal and rationale for the result within thirty days after the record of appeal is submitted unless the decision is delayed for good cause. The written decision will be provided simultaneously to both parties.

3. Appeal to the Board of Determination of Responsibility

a. Deadline and Grounds for Appeal

Either party may appeal decisionmaker's decision to the Board in writing within 10 days of receiving the decision. The appeal must state with particularity whether the party is appealing the decisionmaker's decision with regard to (1) the determination of whether the alleged conduct constitutes sex discrimination or sex-based harassment, or (2) the school system's response to any violation, including the appropriateness of any remedial measures taken by the school system. If the complainant is appealing pursuant to option (2), the complainant must state what additional measures the complainant believes should have been taken by the school system.

The party seeking the appeal shall send the appeal to the superintendent to forward to the Board Chair.

b. Board Appeal Procedures

- 1) The Board will hear the appeal. Unless otherwise required by law, the Board may designate a panel of two or more Board members to hear and act on behalf of the Board.
- 2) Appeal procedures will be implemented equally for both parties and will follow any applicable procedures in policy or state law, modified as necessary to allow equal participation of the parties.
- 3) The panel shall make reasonable efforts to meet and consider the appeal within 20 days after the Board Chair refers the appeal to the panel.
- 4) Notice of the appeal hearing will be given to the parties.
- 5) The Board panel shall review the complaint on the record unless it determines that additional information may be presented. No new evidence, written or verbal, may be presented without the prior knowledge and consent of both parties. Each party may make a brief oral presentation of no more than 20 minutes to summarize the party's position. The Board panel has the authority to ask questions, extend time limits, exclude extraneous or duplicative information, and otherwise maintain an efficient and fair appeal hearing. The hearing will be recorded and shall be held in closed session.

c. Decision on Appeal

- 1) The Board panel may affirm, reverse or modify the decision of the decisionmaker.
- 2) The decision will be reversed if :
 - a) there was a procedural irregularity that affected the outcome of the matter;
 - b) there was new evidence that was not reasonably available at the time the complaint was dismissed, that could affect the outcome of the matter;
 - c) the Title IX coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome of the matter, which must be stated with particularity in the written appeal; or
 - d) the decision was any of the following:
 - i. in violation of constitutional provisions;
 - ii. in excess of the statutory authority or jurisdiction of the school system;
 - iii. made upon unlawful procedure;
 - iv. affected by other error of law;
 - v. unsupported by substantial evidence (meaning relevant evidence as a reasonable mind might accept as adequate to support a conclusion) in view of the entire record as submitted; or
 - vi. arbitrary, capricious, or otherwise not in the best interest of the school system.
- 3) If the decisionmaker's decision is reversed or modified, the Board will determine the appropriate response, which may include a remand for a supplemental investigation, a modified decision, or both, or such other action as the Board determines is necessary.
- 4) The panel will provide a final written decision within 20 days after the Board hearing unless the panel determines that additional time is needed for further review. The decision of the Board panel shall be final.

Legal Reference: Title IX of the Education Amendments Act of 1972, [20 U.S.C. 1681](#) *et seq.*, [34 C.F.R. pt. 106](#)

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