

## TITLE IX FORMAL COMPLAINT PROCEDURES

### Definitions

All terms in this regulation have the meaning as defined in FFH(LEGAL) at Response to Sexual Harassment. In addition:

“Coordinator” means the Title IX Coordinator. The District Title IX Coordinator may designate additional Title IX Coordinators at the campus and departmental level.

“Complainant” means the alleged victim of conduct that could constitute sexual harassment and may include a parent acting for a student. Where the Title IX Coordinator signs a formal complaint, the Coordinator is not a complainant.

“Days” means District business days unless otherwise noted by the District.

“District” or “the district” refers to any employee or person designated to fulfill obligations under law or board policies.

“Education program or activity” means locations, events, or circumstances over which the District exercises substantial control over both the respondent and the context in which the alleged sexual harassment occurs.

“Party” or “parties” refers to the complainant and respondent. Where the Title IX Coordinator signs a formal complaint, the Coordinator is not a party.

“Parent” means a person defined by 34 C.F.R. § 99.3 who may act on behalf of a student unless prohibited by law or court order, including signing a formal complaint, agreeing to supportive measures, or responding to allegations in a complaint [see FL(LEGAL)].

“Preponderance of Evidence” is a standard of evidence meaning that a proposition is more likely than not to be true.

“Respondent” means the alleged perpetrator of conduct that could constitute sexual harassment and may include the parent acting on behalf of a student.

“Sexual harassment” refers to sexual harassment as defined by Title IX [see FFH(LEGAL)].

“Student” means an enrolled student or other non-employee who is participating or attempting to participate in the District’s education program or activity.

“Title IX disciplinary sanction” means an action that is not a supportive measure as defined by 34 C.F.R. § 106.30 and is imposed against a respondent only after the District follows the Title IX formal complaint process in compliance with law and board policy. Title IX disciplinary sanctions do not include an authorized interim action or measure, and do not refer to discipline imposed on a respondent under the District’s Student Code of Conduct for conduct other than sexual harassment, as defined by Title IX. [See FFH(LEGAL)]

“Title IX personnel” includes the Coordinator and other individuals designated by the District or Coordinator to perform a role in the formal complaint process, including

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investigator, decision-maker, appeal hearing officer, and, if applicable, facilitator of an informal resolution process.

The District's Title IX Coordinator will respond promptly and equitably to any verbal or written report or disclosure of alleged sexual harassment received from any source, including personal observation that provides a District employee notice of the alleged conduct. The Title IX Coordinator will address anonymous reports only if there is an identifiable party.

In accordance with law, the Title IX Coordinator may consolidate formal complaints or separate proceedings where allegations of sexual harassment arise out of the same facts or circumstances.

For all other allegations, the Title IX Coordinator will follow the applicable District policy and procedures, including FFH, as applicable, for Investigations of Reports Other Than Title IX, FFI regarding bullying, DH for employee standards of conduct, or the Student Code of Conduct. Concurrent with a Title IX formal complaint process, the District may implement discipline in accordance with board policies and the Student Code of Conduct for prohibited conduct other than sexual harassment as defined by Title IX.

**Initial Response** Upon receipt of a report alleging sexual harassment, the District's Title IX Coordinator or designee will promptly contact the complainant, when identified, to offer supportive measures and interact with the complainant to:

- 1) Provide information about supportive measures;
- 2) Discuss the availability of supportive measures;
- 3) Consider the complainant's wishes concerning supportive measures;
- 4) Explain to the complainant the process for filing a formal complaint under Title IX; and
- 5) Provide each complainant with a copy of the District's Title IX formal complaint process.

The Title IX Coordinator's initial response and interaction may be directed solely at the parent of the alleged victim, when appropriate based on the circumstances.

**Equitable Treatment** The District's treatment of complainants, respondents, witnesses, and any other person involved in a formal complaint process shall not discriminate on the basis of sex. All parties involved will be treated fairly, with dignity, respect, and sensitivity and without bias, prejudice, or reliance on stereotypes.

**Supportive Measures** The Title IX Coordinator is responsible for effective implementation of supportive measures and will serve as the point of contact for any questions or concerns related to supportive measures.

Supportive measures must be offered to a complainant and, as appropriate, also to a respondent. Supportive measures must be offered regardless of whether a formal complaint is initiated, or whether the complainant participates in the formal complaint process. A complainant is not required to show proof of allegations to receive supportive measures and is not required to accept supportive measures.

Supportive measures shall be individualized, non-punitive, offered without fee or charge, and shall not unreasonably burden either party. The District is not required to offer or provide supportive measures to unidentified parties.

Examples of supportive measures may include:

- counseling about inappropriate behavior and educational conversations;
- explaining to a respondent in detail the district’s anti-sexual harassment policy and expectations of appropriate conduct;
- temporarily sending a student to the principal’s office;
- changing seating assignments or class assignments;
- providing other counseling;
- extending of deadlines or other course-related adjustments, including retaking exams or completing makeup work;
- implementing mutual or unilateral restrictions on contact between parties;
- identifying specific campus employees to serve as regular points of contact for each party
- modifying class or activity schedules;
- escorting parties when on campus;
- changing campus assignments;
- increasing security and monitoring of certain areas of the campus; or other similar measures designed to help a student stay in school and on track academically, protect the safety of a student, or deter sexual harassment.

**Emergency Removal** In accordance with law, the District has the right to remove a student respondent from the District’s education program or activity when the District determines, based on an individualized safety and risk analysis, that removal is justified due to an immediate threat to the physical health or safety of any student or other individual, including either of the parties in a formal complaint, arising from the allegations of sexual harassment. The District shall provide notice of removal to the respondent. [See FFB]

Removal under this provision must comply with all due process requirements under law and policy, including the Individuals with Disabilities Education Act (IDEA) and Section 504.

**Post-Removal Challenge** Immediately following the emergency removal, the District shall provide the respondent with an opportunity to challenge the decision in accordance with the applicable board policy or the Student Code of Conduct.

**Administrative Leave** Title IX and these procedures do not restrict the District’s right to place an employee respondent on administrative leave pending an investigation.

**No Bias or Conflict of Interest** All Title IX personnel must serve impartially and free from conflicts of interest or bias against the individual complainant and respondent involved in a formal complaint or against complainants and respondents generally.

**Presumption of Non-responsibility** All District actions must presume that the respondent is not responsible for the alleged conduct until after a final determination in a formal complaint process. In a formal complaint process, a respondent may face Title IX disciplinary sanctions for sexual harassment only after a fair process determines responsibility. However, even if a Title IX formal complaint is not filed or signed, the District may investigate and respond to prohibited conduct in accordance with board policies and the Student Code of Conduct.

## Formal Complaints

A formal complaint may be filed with the District's Title IX Coordinator by using a form provided by the District. Copies of any documents that support the complaint should be attached to the complaint.

The Title IX Coordinator may, without consent of a complainant, sign a written complaint to initiate the process. A complainant is not required to participate in the formal complaint signed by a Title IX Coordinator but will retain all the rights of a complainant in the process.

In accordance with law and policy, the Title IX Coordinator will coordinate the assignment of duties to ensure that all obligations under Title IX are completed in a timely manner.

**Time Frame for Formal Complaint Process**      Absent good cause for the District to delay an investigation, the Title IX formal complaint process beginning with filing or signing of the formal complaint and ending with the determination of responsibility should be completed within a prompt and reasonable time frame that complies with federal legal requirements. Days used for any voluntary informal resolution process do not count towards the time frame for concluding the formal complaint process.

**Modifying Time Frames**      In calculating timelines under this regulation, the day a document is filed is "day zero" and the next District business day is "day one." Deadlines may be extended for good cause as determined by the Title IX Coordinator.

The District shall make reasonable attempts to schedule meetings at a time mutually agreeable to all parties. However, extensions should not unnecessarily extend the timeline established below for concluding the formal complaint process.

**Notice of Allegations**      Upon receipt of a formal complaint, the Title IX Coordinator will provide written notice to the complainant and respondent about the allegations of sexual harassment and allow sufficient time for the parties to prepare a response before any initial interview with the assigned investigator. This notice must contain the following:

- Allegations of potential sexual harassment as defined by law, including sufficient details known at the time such as identity of parties, alleged conduct, and date(s) and location(s) of alleged incident(s);
- A statement that the District, by law, must presume that the respondent is not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the formal complaint process;
- Notification that each party may choose an advisor of choice who may be, but is not required to be, an attorney;
- The right of each party to inspect and review evidence under section 34 C.F.R. § 106.45(b)(5)(vi);
- The standard of evidence that will be used [see FFH(LOCAL)];
- Notification about the District's Title IX formal complaint process, including procedures for informal resolution and appealing the final determination; and
- Any provision of a District code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the formal complaint process.

The Title IX Coordinator may attach a copy of Policy FFH to the Notice of Allegations.

**Dismissal of Complaint of Allegation**

Upon dismissal of a formal complaint or an allegation therein, the Title IX Coordinator will promptly provide written notification to both parties. Dismissal of an allegation or allegations does not preclude action under another provision of the code of conduct.

**Mandatory Dismissal**

A formal complaint or allegation must be dismissed as required by law when the allegation(s), if proved:

- Would not meet the definition of sexual harassment under 34 C.F.R. § 106.30(a);
- Did not occur against a person in the United States; or
- Did not occur in the District's education program or activity.

**Discretionary Dismissal**

A formal complaint may be dismissed for the following reasons:

- If, at any time, a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations in the complaint;
- If the respondent is no longer enrolled or employed by the District;
- If specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein; or
- If the complainant no longer has any involvement with the District.

**Appeal of Complaint Dismissal**

In accordance with law and local policy, the complainant may appeal the written dismissal of a formal complaint or any allegations therein on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made and that could affect the outcome of the matter; or
- The Title IX Coordinator, investigator, or decision-maker 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.

Title IX does not require the District to accept appeals based on any other reasons.

To initiate an appeal, a complainant must follow the procedures below at Appeal Procedures.

**Standard of Evidence**

The District uses the preponderance of evidence standard of evidence to determine responsibility unless stated otherwise in FFH(LOCAL).

**Privileged Information**

If a party seeks or uses information protected under a legally recognized privilege (for example doctor-patient privilege or attorney-client privilege), the party must provide written documentation indicating that the individual holding the privilege has waived the privilege and consents to use for the purpose of the formal complaint process.

**Investigation of Formal Complaint**

The Title IX Coordinator may serve as an investigator, appoint a trained District employee to serve as an investigator, or, in consultation with the Superintendent, appoint an external investigator, to investigate the allegations in a formal complaint.

The burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility rests with the District and not with the parties. All allegations in a formal complaint will be investigated

**Gathering Evidence** While the District has the burden of proof for determining responsibility, the parties may submit evidence, testimony, witnesses, written witness statements, or other information that they wish the investigator to consider. Any deadlines or other restrictions related to the formal complaint process must apply equally to both parties. The investigator must provide to any party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of any investigative interview or other meetings, with sufficient time for the party to prepare to participate. The investigator may proceed with non-party witness interviews without providing prior written notice.

**Advisors** Each party may be accompanied by an advisor of the party's choice during the interview with the investigator or other meetings during the formal complaint process. The investigator may conduct non-party witness interviews without an advisor present for the witness.

**Confidentiality** In order to preserve the confidentiality of student information protected by the Family Educational Rights and Privacy Act (FERPA), the District may require the parent of a minor student to sign a release form indicating consent to allow the District to release information related to the allegations to the designated advisor. [See FL.] In addition, the District shall inform the parties and any designated advisors that confidential information received during the Title IX formal complaint process, including the evidence received for inspection and review as well as the investigation report, may be used only for purposes of the Title IX formal complaint process and may not be further disclosed or disseminated. Any restriction or requirement regarding a party or advisor must apply equally to all parties.

**Inspection of Evidence** Prior to completion of the investigative report, the investigator will send to each party and the party's advisor, if any, the evidence subject to review and inspection in an electronic format or hard copy. This includes evidence upon which the District's decision-maker may choose not to rely when reaching a determination regarding responsibility, as well as inculpatory or exculpatory evidence. As required by law, each party must be allowed 10 days from the date of receipt of the evidence to inspect and review the evidence, and to submit a written response that the investigator will consider when completing the final investigative report.

**Investigation Report** The investigative report will fairly summarize all relevant evidence and may include the following content:

- Identification of the allegations potentially constituting sexual harassment;
- Responses of each party to the allegations in the formal complaint;
- Relevant evidence considered by the investigator;
- The parties' responses to the evidence after review and inspection; and

The investigator will simultaneously provide the investigation report to both parties. The investigator also will send a copy of the investigation report to the Title IX Coordinator, who immediately will assign a decision-maker and provide the decision-maker with a copy of the investigation report.

**Determination  
Regarding  
Responsibility**

A decision-maker designated by the Title IX Coordinator will make an independent determination regarding a respondent's responsibility for alleged sexual harassment. The decision-maker cannot be the District's Title IX Coordinator or the investigator who investigated the complaint at issue. In accordance with law, the determination of responsibility may not be issued earlier than 10 days from the date the parties received the final investigation report.

After both parties have received the investigative report and prior to a determination regarding responsibility, each party will have 5 days to submit a written response to the investigation report, and written, relevant questions that a party wants asked of any party or witness noted in the investigation report. The decision-maker shall ensure that questioning is relevant, respectful, and non-abusive. The parties must submit a response to any questions provided within 5 days of receiving the questions from the decision-maker. The decision-maker will provide any answers received to all parties, after which the parties will have 5 District business days to submit follow-up questions to the decision-maker for review in the same manner as the initial questions. The decision-maker may extend the timeline for good cause. A party or witness is not required to respond to any questions posed by the other party.

**Prior Sexual  
Behavior**

In reaching a final determination, the decision-maker will not consider relevant any questions and evidence about the complainant's sexual predisposition or prior sexual behavior, 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 to sexual contact.

The decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant.

**Written  
Determination**

The decision-maker will issue a determination regarding responsibility for the alleged conduct in a reasonably prompt manner after the date all questions, answers, and supporting documentation were requested to be submitted to the decision-maker.

The written determination of responsibility will include:

- Identification of the allegations potentially constituting sexual harassment;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the District's applicable code of conduct or other policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any Title IX disciplinary sanctions the District will impose on the respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided to the complainant; and
- The procedures and permissible bases for the complainant and respondent to appeal the determination.

The determination of responsibility, and any recommended Title IX disciplinary sanctions therein, is not final or effective until after the period for appeal is over in accordance with these procedures at Appeal of Determination.

## Appeals

In accordance with law and local policy, either party may appeal the written determination regarding responsibility or a dismissal of a formal complaint or any allegations therein only on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
- The Title IX Coordinator, investigator, or decision-maker 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.

Title IX does not require the District to accept appeals based on any other reasons.

### Appeal Procedures

To initiate an appeal, a party must file a written request for appeal with the Title IX Coordinator within 5 days of a party's receipt of the decision-maker's written responsibility determination.

The Title IX Coordinator will review the request and assign an appropriate appeal hearing officer in compliance with law and policy. If the reason for appealing the dismissal or determination of responsibility is not one of the permitted bases for appeal, the District may dismiss the appeal.

If the request for an appeal is not dismissed, the Coordinator will designate an appeal hearing officer to proceed. The appeal hearing officer may not be the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator who investigated the complaint at issue, or the Title IX Coordinator.

The Title IX Coordinator will notify the non-appealing party in writing when an appeal is filed and implement appeal procedures equally for both parties. Both parties will be provided a reasonable, equal opportunity to submit a written statement in support of, or challenging, the dismissal of a formal complaint or determination of responsibility. Written statements must be submitted within 5 days of receipt of the notice of appeal to be considered.

### District Response to Appeal of Complaint Dismissal

In an appeal of dismissal of a complaint or any allegation therein, the District's designated appeal hearing officer will review the request for appeal and issue a written decision explaining why the appeal of the dismissal is granted or denied. The appeal hearing officer may not be the Title IX Coordinator, the investigator, or the decision-maker assigned to the complaint or allegation at issue.

The written decision of the appeal hearing officer will provide the rationale for the District's response to the complainant's appeal of the District's dismissal of a formal complaint or any allegation therein. A copy of this written response will be provided simultaneously to both parties.



Effect of Appeal of Determination If an appeal regarding the determination of responsibility is filed, the determination does not become final, and the District may not proceed with administering Title IX disciplinary sanctions or remedies based on the determination, until the date that the District provides both parties with the written result of the appeal.

If an appeal is not filed, the determination of responsibility becomes final on the date on which an appeal of the determination would no longer be considered timely.

District Response to Appeal of Determination The written decision of the appeal hearing officer will describe the result of the appeal of the determination regarding responsibility and the rationale for the result. A copy of the written decision of appeal must be provided simultaneously to both parties.

Once an appeal hearing officer issues a written decision regarding the appeal of the determination of responsibility, the District will proceed with implementing Title IX disciplinary sanctions or remedies or take other appropriate action.

## **Remedies**

If a respondent has been determined through the formal complaint process to be responsible for the alleged sexual harassment, the District must provide remedies to the complainant that are designed to restore or preserve the complainant's equal access to the District's educational programs and activities. The Title IX Coordinator is responsible for effective implementation of remedies.

In addition to the individualized services described in this regulation as supportive measures, remedies may include the following sanctions or measures:

- Suspension
- Expulsion
- Removal to DAEP
- Any disciplinary measure provided by the District's Student Code of Conduct

Remedies need not be non-disciplinary, non-punitive, or avoid burdening the respondent.

## **Informal Resolution**

If a formal complaint has been filed, other than a complaint alleging sexual harassment of a student by an employee, and prior to reaching a determination regarding responsibility, the Title IX Coordinator may offer but may not require a party to participate in a voluntary informal resolution process.

In addition, either party may request informal resolution by making a written request to the Title IX Coordinator, who will promptly notify the other party of this request. The other party is not required to agree to participate. If a party declines or at any time withdraws from an informal resolution process, the Coordinator will notify the other party that the informal resolution process has been terminated and resume the formal complaint process. The Title IX Coordinator may terminate the informal resolution process for good cause as determined by the Coordinator.

Prior to facilitating or designating another person to facilitate the informal resolution process, the Title IX Coordinator will provide both parties written notice that contains at least the following information:

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; provided, however, 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 grievance process with respect to the formal complaint; and
3. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The Title IX Coordinator will obtain the parties' voluntary, written consent to participate the informal resolution process.

**Title IX Sexual Harassment Training**

The District will provide all Title IX personnel, including the Title IX Coordinator, investigators, decision-makers, and any person designated to facilitate an informal resolution process, training necessary to perform their duties.

**Records Retention**

Records related to the District's entire response and process related to an allegation of sexual harassment must be maintained in accordance with the District's records control schedules or a minimum of seven years, whichever is longer. The District will direct all assigned Title IX personnel to comply with this recordkeeping requirement. [See FFH(LEGAL)]

**Confidentiality**

The District must keep information confidential as required by law except as necessary to provide supportive measures, to conduct proceedings under the formal complaint process, when disclosure is required by law, or when permitted by the District in compliance with the Family Educational Rights and Privacy Act (FERPA) and state law, or to otherwise carry out the purposes of 34 C.F.R. Part 106. However, the District may not restrict the ability of the parties to discuss the allegations under investigation or to gather and present relevant evidence.

A complainant's identity, if known, must be disclosed to the respondent once a formal complaint is filed by a complainant or signed by the Title IX Coordinator.

**Required Reporting**

At any point during a District's investigation that evidence is uncovered that requires reporting to law enforcement, Child Protective Services, State Board of Educator Certification, or another entity, District employees must take the necessary actions to do so in compliance with law or board policy.