

103 AR - DISCRIMINATION/ DISCRIMINATORY HARASSMENT COMPLAINT & GRIEVANCE PROCESS

Step 1 – Formal Complaint

The district is required to initiate the grievance process for formal complaints when a complainant or the complainant's parent/guardian files a formal complaint. The Title IX Coordinator is also authorized to initiate this process despite a complainant's wishes when actions limited to supportive measures are not a sufficient response to alleged behavior, or when a formal complaint process is necessary to investigate and address the situation adequately. For example, if disciplinary action would be warranted if allegations are true, if the respondent is an employee, or if further investigation is needed to assess the extent of the behavior and impact on others, it may be clearly unreasonable not to initiate the formal complaint process. Only the Title IX Coordinator is authorized to initiate the formal complaint process despite a complainant's wishes, but the Title IX Coordinator may consult with the school solicitor and other district officials in making this decision.

The complainant or the Title IX Coordinator shall use the designated section of the Discrimination/Sexual Harassment/Bullying/Hazing/Dating Violence/Retaliation Report Form to file or sign a formal complaint. The Title IX Coordinator shall assess whether the investigation should be conducted by the building principal, another district employee, the Title IX Coordinator or an attorney and shall promptly assign the investigation to that individual.

The Title IX Coordinator, investigator, decision-maker, or any individual designated to facilitate the informal resolution process, each must have completed the required training for such roles as designated in Board policy and shall not have a conflict of interest or bias for or against an individual complainant or respondent, or for or against complainants or respondents in general.

The respondent shall be presumed not responsible for the alleged conduct until a written determination regarding responsibility has been made at the conclusion of the grievance process for formal complaints.

Notice Requirements –

Upon receipt of a formal complaint, or when the Title IX Coordinator signs a formal complaint to initiate the grievance process for formal complaints, the Title IX Coordinator shall provide written notice to all known parties, and the parents/guardians of known parties, where applicable, providing the following information:

1. Notice of the district's grievance process for formal complaints and any informal resolution process that may be available.
2. Notice of the allegations potentially constituting Title IX sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
 - a. The identity of the parties involved, if known.
 - b. The conduct allegedly constituting sexual harassment.
 - c. The date and location of the alleged incident(s), if known.
3. A statement that a written determination regarding responsibility shall be made at the conclusion of the grievance process for formal complaints and, until that time, the respondent is presumed not responsible for the alleged conduct.

4. Notice that parties may have an advisor of their choice, who may be, but is not required to be, an attorney. The advisor may inspect and review evidence.
5. Notice that Board policy and the district's Code of Student Conduct prohibits knowingly making false statements or knowingly submitting false information to school officials in connection with reports of misconduct or discrimination complaints.
6. Notice to all known parties of any additional allegations that the district decides to investigate during the course of the investigation.

Step 2 – Informal Resolution Process

[Note: The informal resolution process cannot be offered or used to facilitate a resolution for any formal complaint where the allegations state that an employee sexually harassed a student.]

At any time after a formal complaint has been filed, but prior to reaching a determination of responsibility, if the Title IX Coordinator believes the circumstances are appropriate, the Title IX Coordinator may offer the parties the opportunity to participate in an informal resolution process, which does not involve a full investigation and adjudication of the Title IX sexual harassment complaint.

The district may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal Title IX sexual harassment complaints. Similarly, a district may not require the parties to participate in an informal resolution process.

Informal resolutions can take many forms, depending on the particular case. Examples include, but are not limited to, mediation, facilitated discussions between the parties, restorative practices, acknowledgment of responsibility by a respondent, apologies, a requirement to engage in specific services, or supportive measures.

When offering an informal resolution process, the Title IX Coordinator shall:

1. Provide the parties a written notice disclosing the following:
 - a. The allegations.
 - b. 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 for formal complaints.
 - c. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
2. Obtain the parties' voluntary, written consent to the informal resolution process. As part of the consent process, all parties shall be informed of the rights being waived by agreeing to the informal resolution process, and shall acknowledge such agreement in writing.
3. The informal resolution process shall be conducted within ten (10) school days of the parties' signed agreement for the informal resolution process.

If the matter is resolved to the satisfaction of the parties, the district employee facilitating the informal resolution process shall document the nature of the complaint and the proposed resolution of the matter, have both parties sign the documentation and receive a copy, and forward it to the Title IX Coordinator within ten (10) school days. After the complaint is resolved in this manner, the Title IX Coordinator shall contact the complainant to determine if the resolution was effective and to monitor the agreed upon

remedies. The Title IX Coordinator shall document the informal resolution process, responses from all parties, and an explanation of why the district's response was not deliberately indifferent to the reported complaint of sexual harassment.

***If Step 2 Informal Resolution Process results in the final resolution of the complaint, the following steps are not applicable.**

Step 3 – Investigation

The designated investigator shall work with the Title IX Coordinator to assess the scope of the investigation, who needs to be interviewed and what records or evidence may be relevant to the investigation. The responsibility as the investigator for complaints of Title IX sexual harassment shall generally be designated to the School Principal. The investigation stage shall be concluded within twenty (20) school days.

When investigating a formal complaint, the investigator shall:

1. Bear the burden of proof and gather evidence and conduct interviews sufficient to reach a written determination. During the process of gathering evidence, unless the district obtains the voluntary, written consent of the party, or the party's parent/guardian when legally required, the district cannot access, consider, disclose or otherwise use a party's records which are protected by legal privilege, such as those records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with providing treatment to the party. (Pol.113.4, 207, 209, 216, Safe2Say Something Procedures)
2. Objectively evaluate all available evidence, including inculpatory and exculpatory evidence.
3. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
4. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. (However the district may request a nondisclosure agreement be signed by the parties and their advisor(s), if any, stating that they will not disseminate or disclose evidence and documents exchanged in the investigation.)
5. Provide the parties with the same opportunities to have others present during any interview or other meeting, including an advisor of the party's choice. The district may establish restrictions, applicable to both parties, regarding the extent to which the advisor may participate.
6. Provide written notice to any party whose participation is invited or expected during the investigation process with the following information, in sufficient time for the party to prepare to participate:
 - a. Date.
 - b. Time.
 - c. Location.
 - d. Participants.
 - e. Purpose of all investigative interviews or other meetings.
7. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations, including evidence the district does not intend to rely on to reach a determination regarding responsibility and any inculpatory and exculpatory evidence, whether obtained from a party or other source.

If at any point the investigation expands to include additional allegations that were not included in the initial notice provided upon initiation of the grievance process for formal complaints, the investigator shall alert the Title IX Coordinator. The Title IX Coordinator shall provide written notice of the new allegations to the known parties.

Prior to the completion of the investigative report, the investigator shall:

1. Send to each party and the party's advisor, if any, the evidence subject to inspection and review in electronic or hard copy format.
2. Provide the parties at least ten (10) school days following receipt of the evidence to submit a written response.
3. Consider the written response prior to drafting the investigative report.
4. The investigator shall draft an investigative report that fairly summarizes relevant evidence and shall provide the investigative report to all parties and to the designated decision-maker.

If the investigation reveals that the conduct being investigated may involve a violation of criminal law, the investigator shall promptly notify the Title IX Coordinator, who shall promptly inform law enforcement authorities about the allegations and make any additional required reports, in accordance with law, regulations and Board policy. (Pol. 218, 317.1, 806)

The obligation to conduct this investigation shall not be negated by the fact that a criminal or child protective services investigation of the allegations is pending or has been concluded. The investigator should coordinate with any other ongoing investigations of the allegations, including agreeing to request for a delay in fulfilling the district's investigative responsibilities during the fact-finding portion of a criminal or child protective services investigation. Such delays shall not extend beyond the time necessary to prevent interference with or disruption of the criminal or child protective services investigation and the reason for such delay shall be documented by the investigator.

In the course of an investigation, it is possible that conduct other than, or in addition to, Title IX sexual harassment may be identified as part of the same incident or set of circumstances. The fact that there may be Title IX sexual harassment involved does not preclude the district from addressing other identified violations of the Code of Student Conduct or Board policy. If such other conduct is being investigated and addressed together with Title IX sexual harassment as part of the Title IX grievance process for formal complaints, disciplinary action normally should not be imposed until the completion of the Title IX grievance process for formal complaints. A decision whether and when to take such action should be made in consultation with the school solicitor.

Step 4 – Written Determination and District Action

Designation of Decision-Maker -

To avoid any conflict of interest or bias, the decision-maker cannot be the same person as the Title IX Coordinator or the investigator. The responsibility as the decision-maker for complaints of Title IX sexual harassment shall generally be designated to the Business Manager.

If the Business Manager has a conflict of interest or is a party in the formal complaint process, they shall disclose the conflict and the Title IX Coordinator shall designate another individual to serve as the decision-maker.

Written Determination Submissions -

A written determination of responsibility (written determination) must not be finalized less than ten (10) days after the investigator completes the investigative report and provides it to all parties. Before the decision-maker reaches a determination regarding responsibility, the decision-maker shall afford each party the opportunity to submit written, relevant questions that a party wants to be asked of any party or witness, shall provide each party with the answers, and shall allow for additional, limited follow-up questions from each party.

Relevant questions for a party or witness must be submitted by each party within three (3) school days following receipt of the investigative report. Follow-up questions must be submitted by each party within five (5) school days of being provided the answers to the initial questions.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant as part of the follow-up questions and responses, 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 shall explain to the party proposing the questions about any decision to exclude a question as not relevant.

Written Determination -

The decision-maker must issue a written determination for the conduct alleged in formal complaints. To reach this determination, the decision-maker shall apply the preponderance of the evidence standard, meaning that the party bearing the burden of proof must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not. In considering evidence, the decision-maker shall ensure credibility determinations are not based on an individual's status as a complainant, respondent or witness.

After considering all relevant evidence, the decision-maker shall issue a written determination that includes:

1. Identification of the allegations potentially constituting Title IX sexual harassment.
2. A description of the procedural steps taken from the receipt or signing of the formal complaint through the written determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence.
3. Findings of fact supporting the determination.
4. Conclusions regarding the application of the district's Code of Student Conduct or Board policies to the facts.
5. A statement of, and rationale for, the result as to each allegation, including:
 - a. Determination regarding responsibility.
 - b. Disciplinary sanctions.
 - c. Remedies designed to restore or preserve equal access to the district's education program or activity that will be provided by the district to the complainant. Such remedies may be punitive or disciplinary and need not avoid burdening the respondent.
6. The procedures, deadline and permissible bases for the complainant and respondent to appeal.

The written determination shall be provided to the parties simultaneously. The determination becomes final either:

1. On the date that the district provides the parties with the written decision of the result of the appeal, if an appeal is filed;
2. Or, if an appeal is not filed, on the date on which an appeal would no longer be considered timely, in accordance with the timeframe established for appeals in this Attachment.

The Title IX Coordinator shall be responsible to ensure that any remedies are implemented by the appropriate district officials and for following up as needed to assess the effectiveness of such remedies. Disciplinary actions shall be consistent with the Code of Student Conduct, Board policies and administrative regulations, district procedures, applicable collective bargaining agreements, and state and federal laws and regulations, including specific requirements and provisions for students with disabilities. (Pol. 113.1, 218, 233, 317, 317.1)

Appeal Process

The district shall offer both parties the right to appeal a determination of responsibility and the right to appeal the district's dismissal of a Title IX formal complaint or any allegation in the Title IX formal complaint. The scope of appeals related to Title IX sexual harassment are limited to the following reasons for appeal as stated in the Title IX regulations:

1. A procedural irregularity that affected the outcome of the matter.
2. New evidence that that could affect the outcome was not reasonably available at the time the decision to dismiss or determination of responsibility was made.
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against the individual complainant or respondent or for or against complainants or respondents generally that affected the outcome of the matter.

Written notice of a party's appeal shall be submitted to the Title IX Coordinator within fifteen (15) school days after the date of the written determination. Notice of appeal shall include a brief statement describing the basis for the appeal.

The Title IX Coordinator shall ensure that the designated appeal authority is not the same person as the decision-maker that reached the determination, the investigator, or the Title IX Coordinator. The designated appeal authority shall be the Superintendent.

For all appeals, the designated appeal authority shall:

1. Provide written notice to the other party when notice of an appeal is filed and implement appeal procedures equally for both parties.
2. Provide both parties a reasonable, equal opportunity to submit a written statement in support of or challenging the stated basis for the appeal. Supporting statements shall describe in detail as applicable the procedural irregularities asserted to have affected the outcome of the determination, the nature of any new evidence asserted to have affected the outcome, and the nature of any bias asserted to have affected the outcome, with an explanation of how the outcome was affected by such factors. If evidence exists supporting the basis for appeal, it shall accompany the supporting statement, or it shall identify where such evidence may be found.
3. Supporting statements must be submitted to the appeal authority and provided to the other party within five (5) school days of the written notice of appeal.

4. Statements in opposition to the appeal shall be submitted within five (5) school days of the submission of supporting statements. If a statement in opposition to an appeal refers to any evidence beyond what is described in a supporting statement, it shall accompany the statement in opposition, or it shall identify where such evidence may be found.
5. The appeal authority may accept and consider evidence in support of or in opposition to an appeal in making any conclusions necessary to deciding the appeal. Alternatively, when the appeal authority determines that factors exist making it necessary for the decision-maker to further develop the evidentiary record relevant to the basis for appeal, the appeal authority may return the matter to the decision-maker for that limited purpose.
6. Determine whether the appeal meets the grounds for permitted reasons for appeal and justifies modifying the written determination.
7. Issue a written decision setting forth the respects, if any, in which the written determination is modified and the rationale for the result within twenty (20) school days.
8. Provide the written decision simultaneously to both parties. A copy of the written decision shall also be provided to the Title IX Coordinator.

Recordkeeping

The district shall maintain the following records for a of a minimum of seven (7) years after conclusion of procedures and implementation of disciplinary sanctions and/or remedies, or in the case of a complainant or respondent who is a minor, until the expiration of the longest statute of limitations for filing a civil suit applicable to any allegation:

1. Each Title IX sexual harassment investigation, including any written determination and any audio or audiovisual recording or transcript, and disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the district's education program or activity.
2. Any appeal and the result.
3. Any informal resolution and the result.
4. All materials used to train the Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process.
5. Records of any district actions, including any supportive measures, taken in response to a report or formal complaint of Title IX sexual harassment. In each instance, the district shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the district's education program or activity. If a district does not provide a complainant with supportive measures, then the district must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the district in the future from providing additional explanations or detailing additional measures taken.

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