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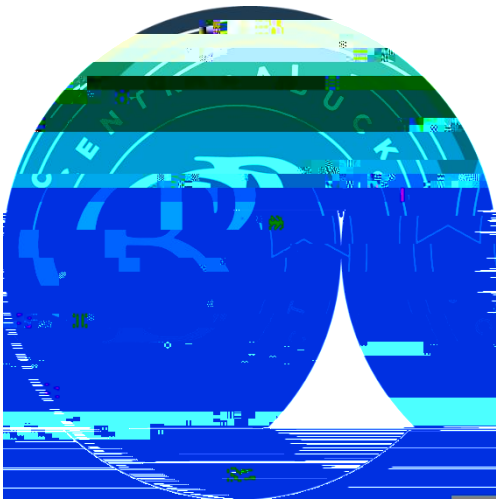
Introduction

TITLE IX SEXUAL HARASSMENT PROCEDURES AND GRIEVANCE PROCESS FOR FORMAL COMPLAINTS



The Title IX sexual harassment procedures and grievance process for formal complaints prescribed in this attachment apply only when a report includes allegations of sexual harassment subject to Title IX regulations (34 CFR 106.44, 106.45).

All other reports or complaints of discrimination or retaliation shall follow the complaint procedures established in Policies 103, 103.1, and 104.

Definitions

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the district's Title IX Coordinator or any district official who has the authority to institute corrective measures on behalf of the district, or to any employee of an elementary and secondary school, other than the respondent.

Exculpatory evidence means evidence tending to exonerate the accused or helps to establish their innocence.

Inculpatory evidence means evidence tending to incriminate the accused or indicate their guilt.

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging Title IX sexual harassment and requesting that the district investigate the allegation. The authority for the Title IX Coordinator to sign a formal complaint does not make the Title IX Coordinator

- Sexual assault, dating violence, domestic violence or stalking.
  - Dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship is determined by the following factors:
    - Length of relationship.
    - Type of relationship.
    - Frequency of interaction between the persons involved in the relationship.

The Title IX Coordinator shall also determine what supportive measures may be offered to the respondent.

If either party is an identified student with a disability, or thought to be disabled, the Title IX Coordinator shall contact the appropriate Supervisor of Special Education

Required Reporting Under Other Policies

In addition to implementing the Title IX sexual harassment procedures, the Title IX Coordinator shall ensure that reported conduct which meets the definition of other laws, regulations or Board policies, is also appropriately addressed in accordance with the applicable laws, regulations or Board policies, including but not limited to, incidents under the Safe Schools Act, reports of educator misconduct, threats, or reports of suspected child abuse.

Timeframes

Reasonably prompt timeframes shall be established for the conclusion of the grievance process for formal complaints, including timeframes for the informal resolution process and timeframes for filing and resolving appeals.

The established timeframes included in these procedures may be adjusted to allow for a temporary delay or a limited extension of time for good cause. Written notice of the delay or extension and the reason for such action shall be provided to the complainant and the respondent and documented with the records of the complaint. Good cause may include, but is not limited to, considerations such as:

- The absence of a party, a party's advisor or a witness.
- Concurrent law enforcement activity.
- Need for language assistance or accommodation of disabilities.

Redirection or Dismissal of Title IX Formal Complaints

Formal complaints may be dismissed, if at any time during the investigation or written determination steps described below:

- A complainant provides written notification of withdrawal of any allegations or of the formal complaint.
- The respondent

Consolidation of Title IX Formal Complaints

The district may consolidate formal complaints against more than one (1) respondent, or by more than one (1) complainant against one or more respondents, or by one (1) individual against another individual, where the allegations of sexual harassment arise out of the same facts or circumstances.

Grievance Process for Formal Complaints

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

- ¶ Notice of the district's grievance process for formal complaints and any informal resolution process that may be available.
- ¶ 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:
    - o The identity of the parties involved, if known.
    - o The conduct allegedly constituting sexual harassment.
    - o The date and location of the alleged incident(s), if known.
- ¶ 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.
- ¶ 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.
- ¶ 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.
- ¶ 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:

- ¶ Provide the parties a written notice disclosing the following:
    - o The allegations.
    - o 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.

- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

¶ 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.

¶ The informal resolution process shall be conducted within fifteen (15) 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, if other than the Title IX Coordinator, 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 investigation stage shall be concluded within thirty (30) school days.

When investigating a formal complaint, the investigator shall:

¶ Bear the burden of proof and gather evidence and conduct interviews sufficient to reach a written

- ¶ 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.
- ¶ 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:
    - o Date.
    - o Time.
    - o Location.
    - o Participants.
    - o Purpose of all investigative interviews or other meetings.
    - o 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:

- ¶ Send to each party and the party's advisor, if any, the evidence subject to inspection and review in electronic or hard copy format.
- ¶ Provide the parties at least ten (10) school days following receipt of the evidence to submit a written response.
- ¶ Consider the written response prior to drafting the investigative report.

The investigator shall draft

- ¶ 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 five (5) 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 District solicitor or outside counsel.

For all appeals, the designated appeal authority shall:

- ¶ Provide written notice to the other party when notice of an appeal is filed and implement appeal procedures equally for both parties.
- ¶ 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.

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.

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.

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.

- ¶ Determine whether the appeal meets the grounds for permitted reasons for appeal and justifies modifying the written determination.
- ¶ Issue a written decision setting forth the respects, if any, in which the written determination is modified and the rationale for the result within thirty (30) school days.
- ¶ 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 period 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:

- 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.
- Any appeal and the result.
- Any informal resolution and the result.
- All materials used to train the Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process.
- 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