

# G-19.B: Administrative Procedures

## Sexual Harassment Prohibited -Title IX



**THESE ADMINISTRATIVE PROCEDURES WILL BE IN EFFECT ONLY SO LONG AS THE TITLE IX REGULATIONS PUBLISHED BY THE U.S. DEPARTMENT OF EDUCATION ON MAY 19, 2020 ARE EFFECTIVE AND BINDING ON PUBLIC EDUCATION ENTITIES**

### REFERENCES

[Board Policy G-19](#)

### DEFINITIONS

**Complainant:** An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Consent:** Consent must be given through words or conduct. Consent cannot be given when an individual is overcome through the application of physical force, violence, concealment, the element of surprise, kidnapping, extortion, or the threat of retaliatory measures; cannot be given by an individual who is unconscious, unaware that the act is occurring, unable or incapable of resisting, or has been administered a behavior altering substance without their knowledge; cannot be given by someone younger than 14 years of age; cannot be given by someone younger than 18 years of age to someone more than three years older than that individual; and cannot be given by someone younger than 18 to an individual in a position of special trust.

**Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between persons involved in the relationship. For the purposes of this definition:

- A. dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse; and
- B. dating violence does not include acts covered under the definition of domestic violence.

**Domestic Violence:** Violence committed by a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; a person similarly situated to a spouse of the victim as provided for under Utah law; or any other person against an adult or youth victim who is protected from that person's acts under Utah law.

**Formal Complaint:** A document filed and signed by a Complainant or signed by a Title IX coordinator alleging sexual harassment against another individual and requesting that the district investigate the allegation of sexual harassment that takes place while the Complainant is participating in, or attempting to participate in, an educational program or activity of the district.

**Parent:** For the purposes of these administrative procedures and the corresponding board policy, "parent" means:

- A. a biological or adoptive parent;
- B. a legal guardian or other individual legally authorized to make educational decisions for the child;
- C. an individual, with whom the child lives, who is acting as a parent in the absence of a natural parent or a guardian;
- D. a foster parent if the authority of the biological or adoptive parents to make educational decisions on the child's behalf has been terminated or specifically limited by a court order;
- E. in the absence of any individual qualified under parts A-D, a surrogate parent appointed pursuant to the Individuals with Disabilities Education Act; and/or
- F. a stepparent if the stepparent is present on a day-to-day basis with the natural parent and child, and the other parent is absent from the home. A stepparent who is not present on a day-to-day basis in the home of the child does not have rights under Family Educational Rights and Privacy Act (FERPA) with respect to the child's education records. Stepparents without guardianship of a child do not have the authority to enroll or register a child in school.

"Parent" does not include the state or any political subdivision of government.

**Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Retaliation:** Any form of sanction or adverse treatment, including but not limited to intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege provided by Title IX or these procedures, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation.

**Sexual Assault:** Conduct that includes, but is not limited to:

- A. any attempted or actual sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent;
- B. rape;
- C. fondling; or

D. statutory rape.

See, 20 U.S.C. §1092(f)(6)(A)(v).

**Sexual Harassment:** Conduct on the basis of sex that satisfies one or more of the following:

- A. a district employee conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
- B. unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; and
- C. conduct that could be considered sexual assault, dating violence, domestic violence, and/or stalking.

**Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress. See, 34 U.S.C. §12291(a)(30).

**Supportive Measures:** Non-disciplinary, non-punitive individualized services which are offered as appropriate, as reasonably available, and without fee or charge to the Complainant and/or the Respondent at any time. Such measures are designed to restore or preserve equal access to the district's education program or activity without unreasonable burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment, or deter sexual harassment. These measures may include counseling; extensions of deadlines or other course-related adjustments; modifications of work or class schedules; site escort services; mutual restrictions on contact between the parties; changes in work or study locations; leaves of absence; increased security and monitoring of certain areas of the school and/or district property; and/or other similar measures.

**Title IX Coordinator:** The person designated at the district level to handle inquires and complaints regarding unlawful discrimination, harassment, sexual harassment, and retaliation: Tina Hatch, 440 East 100 South, Salt Lake City, Utah 84111; 801.578.8388; [tina.hatch@slcschools.org](mailto:tina.hatch@slcschools.org). Deputy Title IX coordinators will be assigned at each school and trained by the district's Title IX Coordinator.

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## PROCEDURES FOR IMPLEMENTATION

The district prohibits unlawful discrimination based on sex/gender, which includes sexual harassment as defined in 20 U.S.C §106.30 of Title IX of the Education Amendments of 1972 (20 U.S.C §1681 et seq.) (see, Definitions above), and/or retaliation on all district premises, during district-sponsored programs and/or activities within the United States, in all aspects of enrollment of students to a district school, employment with the district, and by all district students and employees.

Any student who commits a violation of Title IX or retaliation related to a Title IX complaint will be subject to discipline that may include a long-term suspension, alternative placement, or revocation of a special permit. Any employee who engages in such behavior may be subject to discipline that may include a suspension, demotion, or termination.

If an individual makes a request to any district employee, student, volunteer, or vendor for them to stop engaging in unwanted or unwelcome behaviors of a sexual nature, the request must be complied with immediately.

The district will investigate all complaints related to sexual harassment covered by Title IX in a prompt manner that is not deliberately indifferent, and will take appropriate action to stop violations, prevent recurrence, and remedy any effects of violations. The district will ensure that Complainants and Respondents are treated in an equitable manner, including in the provision of supportive measures and with an assurance that no disciplinary measures will be taken until the investigation is complete and a finding of "responsible" has been determined. The district will ensure that no conflicts of interest or biases are present in individuals involved in carrying out the Title IX investigative process, for or against Complainants and/or Respondents, and that each individual is appropriately trained. All complaints will be investigated by using the preponderance of the evidence standard.

All district employees are required to cooperate in all proceedings conducted pursuant to these procedures. Failure or refusal to cooperate in, or interference with, any such investigation or proceeding will result in disciplinary action up to and including termination. Complainants who choose to not file a formal complaint or choose to withdraw their complaint will not be considered as failing or refusing to cooperate with an investigation.

Nothing in these procedures may be construed to modify any person's rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

### I. Duty to Report

It is the duty of every student and every employee to report any violations of Title IX as outlined in these procedures or the accompanying board policy. Failure to do so may result in disciplinary action.

### II. Confidentiality

- A. While the district recognizes that individuals participating in any aspect of this process may wish to keep their identities and certain facts/statements confidential, the district cannot guarantee confidentiality throughout the formal investigation process.

1. The formal investigation process requires the sharing of all evidence gathered during the course of the investigation, including witnesses' names and statements, with both parties and their advisors, if applicable.
  2. District employees participating in the decision-making process will be required to keep confidential all information/evidence shared with them. Employees in these roles will be required to sign confidentiality agreements.
  3. Outside of the formal investigation process, every effort will be made to keep confidential the identity of any individual who has made a report or complaint of sex discrimination/sexual harassment, any Complainant, any Respondent, and any witness, except as may be required by the Family Educational Rights and Privacy Act (FERPA) or other legal processes.
  4. Greater confidentiality may be maintained if the Complainant chooses to not pursue a formal investigation (e.g., chooses to not file a formal complaint or chooses to pursue informal resolution of the complaint) or only requests supportive measures.
    - a. Implementation of certain supportive measures such as no-contact orders between the Complainant and Respondent will require the Complainant's identity to be disclosed to the Respondent.
- B. In all cases, the Title IX coordinator receiving the complaint should discuss confidentiality standards and concerns with the Complainant initially. The Complainant must be informed that a request for anonymity will prevent the district from conducting a formal investigation under Title IX.

### **III. Requesting Assistance**

At any point in the grievance process, the Complainant, the Respondent, or any witness, may request assistance in order to ensure their due process rights are being protected. Examples of such requests include, but are not limited to, assistance filling out a complaint form or other necessary paperwork, provision of translation or interpreter services, and assistance with understanding/undertaking the formal investigation process. All requests for assistance must be directed to the individual assigned to investigate the complaint. Assistance with what claims to assert, what defenses should be raised, what testimony to give, or other content issues will not be provided.

### **IV. Reporting an Incident**

- A. Individuals who believe that they have been subjected to sex discrimination, including sexual harassment, shall report the incident. Reports may be made to the district's Title IX Coordinator (TIXC) or to the Deputy Title IX Coordinator (DTIXC) at the school site where the alleged incident occurred, either in person, by mail, by telephone, by electronic mail, or through the "Non-Discrimination/Title IX/Bullying" button located under the non-discrimination statement at the bottom of every main page on the district's website. (For specific contact information, refer to Definitions, Title IX Coordinator above.)
1. A Complainant may make a report of a sexual harassment incident at any time. Ideally, the report should be made as soon as possible, but preferably not later than thirty (30) days after the incident(s) in order to be effectively investigated and resolved. Reports may be made at any time of the day, including during non-business hours, through any of the methods listed in Section A above.
- B. Any district employee who learns of an incident involving the sexual harassment of a student must immediately inform the DTIXC at the school site.
1. Any district employee who learns of a sexual harassment incident from a student shall inform the student of the employee's obligation to report the complaint to the DTIXC.
  2. Pursuant to state law, when a complaint involves allegations of child abuse, the complaint must immediately be reported to either the Division of Child and Family Services (DCFS) or local law enforcement, and the anonymity of both the Complainant and school officials involved in the investigation will be strictly protected.
- C. Allegations of sexual harassment involving district employees/vendors/visitors/volunteers should be reported to the TIXC. If a DTIXC receives a report of sexual harassment involving one of the individuals listed above, the DTIXC must forward that complaint to the TIXC.
- D. If the allegations involve the TIXC, the Complainant should contact the district's human resource services department (HRS) at 801.578.8340, 440 East 100 South, Salt Lake City, Utah 84111.
- E. Any report clearly alleging criminal conduct, including sexual assault/violence, will be reported to local law enforcement. Under Title IX, a Complainant has the right to file a criminal complaint and a Title IX complaint simultaneously.
- F. Individuals who make a good faith report of sexual harassment will not have their employment, grades, work assignments, or participation in district-sponsored programs or activities adversely affected. However, a student or employee who knowingly files a false report may be subject to civil and/or legal actions as well as district disciplinary action.

- G. If the district knows or reasonably should know of an incident involving allegations of sexual harassment, the district must take steps to understand what occurred and respond appropriately.

**V. Meeting With the Complainant/Filing a Formal Complaint**

- A. The initial interview of the Complainant will be conducted by the TIXC or the DTIXC.
  - 1. If the Complainant has not already submitted a written report or the report does not contain detailed information, the Complainant must explain the circumstances which the individual believes support the allegation(s) of sexual harassment and the name(s) of the individual(s) against whom the claim is made.
    - a. The Complainant should provide as much information as possible including any conversation(s) with the Respondent, noting the time, date and place, what was said or done, and any other relevant circumstances surrounding the event(s).
  - 2. In reviewing any submitted report and discussing the situation with the Complainant, the TIXC/DTIXC will determine whether the complaint falls under Title IX or under a different law, statute, or board policy.
    - a. Alleged conduct that can be investigated under these procedures is limited to that which, if true, meets the definitional requirements of Title IX.
    - b. To be investigated under these procedures, the alleged conduct must fall within one of the following three categories:
      - i. A district employee conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
      - ii. unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or
      - iii. conduct that could be considered sexual assault, dating violence, domestic violence, and/or stalking.
- B. After determining whether the alleged conduct falls within the parameters listed above in Section A.2. above, the TIXC/DTIXC will determine which internal process will be used to investigate the complaint, will communicate the decision to the Complainant in person, and will follow-up with a communication via email or United States Postal Service.
  - 1. If the TIXC/DTIXC determines that the alleged conduct falls outside of these Title IX procedures, they shall ensure that the allegations are forwarded to the appropriate individual for investigation.
    - a. Allegations involving only students that if true would constitute a student code of conduct violation, bullying, discrimination, etc. will be investigated at the school site by the designated administrator.
    - b. Allegations that involve employees, vendors, visitors, and volunteers should be forwarded to the TIXC and the executive director of HRS for investigation.
  - 2. If the complaint is covered by Title IX:
    - a. the TIXC/DTIXC will provide information about supportive measures to the Complainant, and may develop a safety plan for the Complainant, as appropriate. (See, Section VII, Provision of Supportive Measures and Prohibited Retaliation, below.)
    - b. the TIXC/DTIXC will discuss the Title IX process with the Complainant, including the formal investigation process, the option for an informal resolution, and the level of confidentiality provided in each process.
- C. If the Complainant decides to file a formal complaint under Title IX to initiate an investigation, a Board Policy G-19: Complaint and/or Request for Investigation form must be signed by the Complainant.
  - 1. The DTIXC must immediately forward a copy of the written complaint to the TIXC.
- D. If the Complainant chooses to not file a formal complaint, but the TIXC/DTIXC believes that serious health and safety concerns exist which warrant a response by the district, the TIXC/DTIXC may sign the complaint form to initiate a formal investigation.
  - 1. Signing the complaint form does not make the TIXC/DTIXC a party to the complaint.
- E. The TIXC has primary responsibility for investigating all signed Title IX complaints.
  - 1. In the event of a conflict of interest or exigent circumstances, the DTIXC will be trained and available to investigate Title IX complaints involving only students.

**VI. Emergency Removal**

- A. Depending upon the nature of the allegations in the formal complaint, the district may seek the emergency removal of a student Respondent from the educational environment by undertaking an individualized safety/risk assessment related to the allegations of sexual harassment. Any conduct by the student Respondent that is unrelated to the sexual harassment allegations shall not be considered in the safety/risk assessment.
  - 1. Prior to the administration of any safety/risk assessment, the TIXC/DIXC shall provide notice to the student Respondent that a formal Title IX complaint has been filed in accordance with Section IX. below.

2. The TIXC/DTIXC shall immediately contact the director of student services to make arrangements for the assessment to be performed.
  3. The director of student services will coordinate with a qualified individual to perform the assessment as soon as possible.
  4. If the assessment indicates that an immediate threat to the physical health or safety of any student or other individual justifies removal, the student Respondent may be immediately removed from the educational setting. The student will only be removed for as long as the threat or safety concern exists.
    - a. During the removal period, educational services must be provided to the student. A temporary alternative placement (i.e., on-line school, different brick and mortar school) can be considered for a removed student if the anticipated removal period is of a significant duration.
    - b. The qualified individual performing the assessment will reassess as necessary to determine whether the safety/risk concerns still exist.
  5. At any time immediately after or during the removal, the student Respondent may challenge their removal/continued removal by sending a written appeal to the DTIXC, who will then forward the appeal to the director of educational equity and access.
    - a. The director of educational equity and access will review the documentation and determine whether the removal was initially appropriate and/or is still warranted.
    - b. In their sole discretion, the director of educational equity and access may request a reassessment of the student to determine whether the safety/risk concerns still exist.
    - c. The director of educational equity and access shall issue a written decision on the appropriateness of the removal, or continued removal, within three (3) business days of either receiving the appeal or receiving the reassessment report, whichever is later.
  6. Pursuant to the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973, the district may be required to hold a manifestation determination hearing for student Respondents as part of, or prior to, the assessment process.
- B. The district may place an employee on administrative leave during the duration of the investigative process.

#### **VII. Provision of Supportive Measures and Prohibited Retaliation**

- A. At any point after a report of sexual harassment is made, a Complainant, Respondent, and/or witnesses may request and be granted supportive measures to ensure they feel safe in their learning/working environment.
1. For students, such action may include, but is not limited to, any of the supportive measures outlined in Definitions, Supportive Measures above (i.e., no contact orders, providing counseling services and/or academic support services, and/or adjusting passing times, class seating arrangements, class schedules, etc.).
  2. For employees, appropriate steps may include, but are not limited to, any of the supportive measures outlined in Definitions, Supportive Measures above (i.e., no contact orders, and/or changing work schedules or work locations), however any changes will be dependent on the employee's job responsibilities and must be arranged in consultation with HRS.
  3. Retaliation against individuals who file a complaint, are the subject of the complaint, and/or participate in the investigative process for the complaint is strictly prohibited.
  4. School and district administrators must take strong responsive action against retaliation, and shall offer assistance to all individuals involved in the investigation, and if applicable their parents, in reporting subsequent problems and new incidents.

#### **VIII. Dismissals**

- A. The TIXC/DTIXC **must** dismiss formal complaints of sexual harassment of sexual harassment under Title IX if the following conditions apply:
1. the conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if all the factual allegations in the complaint are true;
  2. if the conduct alleged did not occur in a district-sponsored education program or activity; and/or
  3. if the conduct alleged did not occur within the United States.
- B. The TIXC/DTIXC may dismiss formal complaints or any allegations of sexual harassment under Title IX if at any time during the investigation or decision making process:
1. the Complainant notifies the TIXC/DTIXC in writing that the Complainant would like to withdraw the formal complaint or any of the allegations therein;
  2. the Respondent is no longer enrolled in or employed by the district; and/or
  3. specific circumstances prevent the TIXC/DTIXC from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

- C. Upon a dismissal required or permitted pursuant to VIII.A. or B., the TIXC/DTIXC will promptly send written notice of the dismissal and reason(s) for the dismissal simultaneously to the Complainant and Respondent (collectively referred to as "parties"), if the Respondent has knowledge of the complaint.
- D. Formal complaints that are dismissed with regard to sexual harassment under Title IX may still be investigated under a separate board policy and/or administrative procedures.
- E. The Complainant and/or the Respondent has three (3) business days after receipt of the dismissal notice to appeal the TIXC/DTIXC's decision. Appeals must be based on the reasons listed in Section XI.B. below.
  - 1. Appeals must be submitted to the TIXC/DTIXC.
  - 2. Dismissal appeals will be forwarded to a DTIXC who is not involved in the investigative process.
    - a. The TIXC/DTIXC will notify the Complainant/Respondent of the identity of the appeal officer.
  - 3. The assigned DTIXC will review the documentation and determine whether the dismissal was appropriate and will issue a written decision within three (3) business days.
    - a. If the DTIXC determines that the dismissal under Title IX was appropriate, that decision is final.
      - i. Nothing in the DTIXC's decision will prevent the district from addressing the Respondent's conduct under another board policy or administrative procedures.
    - b. If the DTIXC determines that the complaint should not have been dismissed, the investigating TIXC/DTIXC will be required to continue following the investigation process outlined in these procedures.

## **IX. Formal Investigation and Response**

- A. Upon the filing of a formal complaint, the Complainant has the right to choose to follow the formal investigation process outlined below or pursue an informal resolution process. The right to choose informal resolution remains in effect until a determination of responsibility has been made. (See, Section X., Informal Resolution Process.)
- B. The Complainant also has a right to withdraw their complaint at any time during this process. The Complainant must inform the TIXC/DTIXC in writing that they have decided to withdraw the complaint, and the TIXC/DTIXC will inform the Respondent of this decision.
- C. The TIXC/DTIXC may consolidate formal complaints containing allegations of sexual harassment against more than one Respondent; or by more than one Complainant against one or more Respondents; or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.
- D. The TIXC/DTIXC has the burden of gathering evidence sufficient to reach a determination.
- E. The TIXC/DTIXC will not access, consider, disclose, or otherwise use a party's medical records, unless the TIXC/DTIXC obtains that party's voluntary, written consent to do so.
- F. Initial investigation
  - 1. In the event that the Complainant and/or Respondent is a minor, the TIXC/DTIXC will include the minor's parent in all communications with the minor which are required by these procedures and initiated by the TIXC/DTIXC.
  - 2. At a minimum, the TIXC/DTIXC will immediately:
    - a. separately notify the Complainant and the Respondent of the following:
      - i. their right to have someone translate or interpret during the interview;
      - ii. their right to have someone of the same gender conduct or be present during the interview;
      - iii. their right to have an advisor (i.e., parent/guardian, attorney, or another individual of their selection) who can attend meetings, be copied on correspondence, and be provided with the materials/evidence gathered throughout the investigative process;
        - 1) Although the advisor may be present in meetings, and may confer with the Complainant/Respondent, the advisor may not speak for the Complainant/Respondent.
    - b. interview the Complainant and document the conversation;
    - c. provide the Complainant and the Respondent with a copy of these procedures;
    - d. instruct the Complainant/Respondent that it would be beneficial to the investigation if they have no contact or communication regarding the complaint with the other party;
    - e. inform the Respondent that a complaint has been filed against them;
    - f. inform the Respondent that if the objectionable conduct is still occurring, it must cease immediately, and that they must not take any retaliatory action against the Complainant;
    - g. inform the Respondent of their rights and responsibilities during the investigation;
    - h. inform the Respondent that they are not considered responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the formal investigation process; and
    - i. notify the Respondent that they will be afforded a full and complete opportunity to respond to the allegations.

3. The Respondent will be provided with a written notice of complaint and summary of the allegations that includes the information listed in section 2. above, as well as sufficient details of the event(s), a list of all possible proposed violations of policy, the identity of the Complainant, and the approximate date and location of the events.
  - a. If during the course of the investigation further allegations are discovered, the TIXC/DTIXC will deliver an amended notice of allegations to the Respondent which contains sufficient details of the event(s), a list of the amended allegations and the proposed violations of policy, the identity of any new Complainants, and the approximate date and location of the events.
4. Within five (5) calendar days of receiving the notice of complaint and summary of allegations, the Respondent shall submit a written answer to the TIXC/DTIXC.
  - a. The answer should include:
    - i. an admission or denial of each allegation in the complaint;
    - ii. a statement as to the extent to which the complaint has merit; and
    - iii. any other information the Respondent deems relevant.
  - b. If the Respondent admits the allegations, disciplinary action will be coordinated by the TIXC/DTIXC and the appropriate district administrator(s).
    - i. At a minimum, a written reprimand shall be issued to an employee Respondent and a copy placed in their employment file.
  - c. If the Respondent elects not to submit a written response, the TIXC/DTIXC will continue the investigation without the response and will note the Respondent's failure to respond in the investigative report.
    - i. The TIXC/DTIXC will determine whether a formal interview is appropriate in the absence of a written response.
5. The Respondent will have the opportunity to respond to the complaint in writing prior to being formally interviewed by the TIXC/DTIXC.
6. The TIXC/DTIXC will provide written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, to any party whose participation is invited or expected, with sufficient time for the party to prepare to participate.
7. The TIXC/DTIXC may interview the Complainant/Respondent on more than one occasion regarding the complaint, the answer, witness statements, and other gathered information.
8. The TIXC/DTIXC may also interview any other individual(s) believed to have pertinent information or who either party identifies as an individual who has knowledge of the alleged incident(s).
9. The investigation will be impartial. Both the Complainant and Respondent shall have the opportunity to list witnesses to be interviewed by the TIXC/DTIXC, and present inculpatory and/or exculpatory evidence for review.
10. All witnesses will have the opportunity to review, edit, and acknowledge by signature or via electronic mail the accuracy of their own written statements or accountings of their interviews.
11. The TIXC/DTIXC will keep the parties and the appropriate district administrator informed of the progress of the investigation.
12. Within twenty (20) business days of receipt of the complaint, unless a longer period of time is deemed necessary due to a delay for good cause, the TIXC/DTIXC shall complete his/her initial investigation.
  - a. If the investigation is delayed for good cause, all parties will be notified in writing of the delay.
13. The TIXC/DTIXC shall provide the parties and their advisors, if applicable, with all relevant evidence that was collected by the TIXC/DTIXC, including any evidence that will not be used when making a determination.
  - a. The evidence will be sent in an electronic or hard copy format. The parties are strictly prohibited from sharing, duplicating, downloading, photographing, or disseminating any evidence not previously in their possession.
    - i. Any party who violates the above prohibition will be subject to additional discipline irrespective of the outcome of the investigation process.
  - b. Both parties shall have ten (10) calendar days after receipt of the evidence to submit any written response to the TIXC/DTIXC which may include any questions either party would like asked of another individual.
    - i. The TIXC/DTIXC has the authority to refuse to ask any questions that are inappropriate, irrelevant, or duplicative.
    - ii. The TIXC/DTIXC has the authority to refuse to question any individual if that individual was not a witness to the incident and/or would not have relevant information regarding the investigation.

- iii. The TIXC/DTIXC may investigate any new information provided by either party in their written response which is deemed relevant to the investigation.
  - iv. The TIXC/DTIXC will include in the investigative report the outcome/analysis of each party's request(s).
14. At the conclusion of the investigation the TIXC/DTIXC will write an investigative report that fairly summarizes all relevant evidence. The TIXC/DTIXC will simultaneously send the investigative report to the parties and their advisors, if applicable, and will provide the report to a 3-person decision making panel (Panel).
  - a. All panelists, including the chair, will be specifically trained to serve as decision makers.
  - b. If the Respondent is a student, the Panel will be chaired by a DTIXC who was not involved in the investigation. The two other parties will be comprised of licensed educators.
  - c. If the Respondent is an employee, the Panel will be chaired by an HRS director. At least one of the other two panelists will be a member of the same employee group as the Respondent.
  - d. The Panel will not include the TIXC/DTIXC.
15. Both parties will have ten (10) calendar days to review the investigative report.
  - a. Each party will be afforded the opportunity to submit written, relevant questions to the Panel that the party wants asked of any individual;
    - i. The Panel will determine whether the questions are relevant, appropriate, and non-duplicative.
  - b. If the Panel determines that the question should be asked, the Panel will ask the specified individual to respond to the question.
    - i. Both parties will be provided with the individual's answer(s), and will be allowed to ask limited follow-up questions; or
    - ii. The parties will be informed as to which questions were excluded and why they were excluded.
16. The Panel will issue a written determination regarding responsibility to both parties and their advisors simultaneously and will also provide a copy to the TIXC/DTIXC.
17. The written determination will:
  - a. be based upon the preponderance of the evidence standard;
  - b. include the allegations;
  - c. include 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 meetings held;
  - d. include findings of fact supporting the Panel's determination;
  - e. include conclusions regarding the application of all relevant board policies to the facts;
  - f. include a statement of, and rationale for, the result as to each allegation, including a determination as to whether the Respondent has been found "responsible" for the conduct, and the disciplinary sanction(s) that will be imposed 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
  - g. include information on the appeal process.
18. After the decision is final, the appropriate district administrator(s) will receive a copy of the decision, review the documentation and implement any disciplinary action outlined in the final report..

**X. Informal Resolution Process**

- A. The district will not require any individual to participate in an informal resolution process or to waive their rights to an investigation.
- B. The informal resolution process is not available under these procedures unless a formal complaint has been filed.
- C. The parties may decide to participate in an informal resolution process at any time during an investigation, up to the point of a determination regarding responsibility.
- D. An informal resolution process will include the following:
  1. All parties will be provided a written notice which includes:
    - a. the allegations for which the informal process is being conducted;
    - b. information that the parties have the right to withdraw from the informal resolution process and resume the formal investigation process with respect to the formal complaint;
    - c. information that a signed informal resolution agreement will preclude the parties from resuming a formal investigation arising from the same allegations;
    - d. disclosure of how information gathered during the informal resolution process will be maintained, kept confidential, and/or potentially disclosed pursuant to state and federal law; and



- e. a statement that the parties will only be allowed two attempts at informal resolution with respect to the same formal complaint.
- E. A district employee who has been trained in restorative justice practices and mediation (mediator) will be assigned to conduct the informal mediation process, including:
  - 1. obtaining the parties' voluntary, written consent prior to conducting the informal resolution or mediation process. The written consent shall include notification of the items listed in Section D.1. above;
  - 2. scheduling meetings and notifying the participants in accordance with the notification requirements outlined in Section IX.F.6. above; and
  - 3. conducting the informal resolution/mediation process and, if successful, creating the informal resolution agreement for the parties to sign.
- F. If the informal resolution process is not successful, the mediator will notify the investigating TIXC/DITXC that the formal investigative process must resume.
- G. No information gathered by the mediator or parties during the informal resolution process may be used by the investigating TIXC/DITXC in the formal investigative process, this includes statements made by the parties.
- H. Under no circumstances will an informal resolution process be used in the event of allegations that an employee sexually harassed a student.

## **XI. Appeal Process**

- A. If the Complainant and/or Respondent (hereafter individually referred to as "Appellant" or collectively referred to as "Appellants") is not satisfied with the outcome of the determination of responsibility, they may file a request for an appeal with the TIXC/DITXC. The appeal must be made within ten (10) business days of the receipt of the Panel's final determination report.
  - 1. The district's network directors will serve as the appeal officers to review appeals of student-student investigations for schools in their respective networks; and
  - 2. an executive director will serve as the appeal officer to review appeals of student-adult or adult-adult investigations.
    - a. The TIXC, in consultation with HRS, will identify the appropriate executive director/network director who will serve as the appeal officer, and will forward that individual the applicable investigative materials for review.
  - 3. The TIXC/DITXC will notify the Appellant of the identity of the appeal officer.
  - 4. The other party will be notified in writing by the TIXC/DITXC of the appeal.
- B. Requests for an appeal shall be in writing. Appeals will only be considered and acted upon if they are based on one or more of the following:
  - 1. evidence of procedural irregularity that affected the outcome of the matter;
  - 2. new evidence or documentation 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
  - 3. evidence that the TIXC/DITXC or a Panel member had a conflict of interest or bias for or against Complainants or Respondents generally or individually that affected the outcome of the matter.
- C. Appeal requests that fail to provide evidence as to one of the bases listed in Section XI.B.1-3. above will be dismissed as without merit.
- D. Appeal requests must also include the following:
  - 1. Appellant's name, home address, telephone number, and school or work location;
  - 2. a brief description of the actions/efforts that have already occurred to address the issue; and
  - 3. a brief description of the reason for the appeal.
- E. The Appellant may also include a statement of requested relief or corrective action.
- F. Within ten (10) business days after receipt of the request, the appeal officer, or designee, will meet with the Appellant to discuss the request and possible resolutions.
- G. The appeal officer will provide both parties an opportunity to submit a written statement in support of or challenging the outcome.
- H. The appeal officer will review the appropriateness of the investigation, response, final investigative report, determination of responsibility, and corrective action taken, if any.
- I. The appeal officer may take any additional steps deemed necessary in order to resolve the request such as re-interviewing the parties or any witnesses, requesting additional information, or interviewing other pertinent individuals.
- J. Within fifteen (15) business days after the initial meeting, the appeal officer will provide a written decision to the Complainant and Respondent simultaneously.
- K. The appeal officer's decision will be final.

**XII. Responsibility for Dissemination of Policy**

- A. Principals and supervisors will take appropriate actions to reinforce these procedures and the accompanying board policy by:
  - 1. ensuring employees complete the annual online training related to sexual harassment;
  - 2. including links to the corresponding board policy and these administrative procedures in employee handbooks;
  - 3. ensuring that by October 1 of each year every student receives an age-appropriate explanation of the policy and is given the opportunity to discuss the policy in a classroom setting; and
  - 4. notifying parents of these procedures by October 1 of each year either by including it in the student handbook or by sending a notice to student homes.
- B. A summary of these procedures and related materials shall be posted in a prominent place in each district facility.

**XIII. Records**

- A. Records of sexual harassment complaints shall be maintained by the TIXC. The records will be kept in a separate and confidential file as required by the Governmental Records and Access Management Act.
- B. The release of information regarding the specific disciplinary action imposed on a student or employee must meet the requirements of the applicable state and federal laws.
- C. Information gathered, developed, and documented in the investigation will be regarded as a protected record.
- D. If the Complainant is an employee, no record of the complaint shall be kept in the Complainant's personnel file.
- E. If there is no finding of responsibility, no record will be placed in the Respondent's personnel file.
- F. The following records shall be retained for at least seven (7) years:
  - 1. each sexual harassment investigation, including any determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and any remedies provided to any individual designed to restore or preserve equal access to the district's education program or activity;
  - 2. records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, or documentation of the reason no such measures were taken;
  - 3. any appeal and the result therefrom;
  - 4. any informal resolution and any resulting agreement; and
  - 5. all materials used to train TIXCs, DTIXCs, Panel, mediators, and appeal officers.

**XIV. District Compliance/Title IX Office**

- A. All questions related to sexual harassment and retaliation should be directed to the TIXC.
- B. The TIXC serves as a resource to the district to provide information, counseling, training, and advice regarding sexual harassment and retaliation. Individuals are encouraged to discuss their concerns or complaint with the TIXC in order to clarify whether sexual harassment may be occurring and to discuss options, including the pursuit of formal action.
- C. The TIXC can also provide information relating to any external remedies which may be available to the Complainant.

**XV. Outside Reporting Procedures**

- A. Nothing in this policy shall prohibit an individual from filing a sexual harassment claim with the Utah Anti-Discrimination and Labor Division (UALD), 160 East 300 South, 3<sup>rd</sup> Floor, P.O. Box 146600, Salt Lake City, UT 84114-6600. An employee has a maximum of one-hundred and eighty (180) calendar days from the alleged date of discrimination to file a claim with the UALD.
- B. If concerns cannot be resolved at the school or district level, sexual harassment complaints may be filed with the Office for Civil Rights, Region VIII, U.S. Department of Education, Federal Building, Suite 310, 1244 Speer Boulevard, Denver, Colorado, 80204-3582.

**XVI. Training**

- A. All new employees shall receive information about these procedures and the related policy at new employee orientation. All other employees shall be provided information on a regular basis regarding these procedures, and the district's commitment to providing a learning and working environment free from sexual harassment and retaliation.
- B. As explained throughout these procedures, all employees who are responsible for implementing any portion of the Title IX process will be appropriately trained. All materials used to train TIXC, DTIXCs, Panel, mediators, and appeal officers will be available on the Title IX page of the district's website.
- C. All employees will be required to annually take the online training related to sexual harassment.

No district employee or student shall be subjected to discrimination in employment or any district program or activity on the basis of age, color, disability, gender, gender identity, genetic information, national origin, pregnancy, race, religion, sex, sexual orientation, or veteran status. The district is committed to providing equal access and equal opportunity in its programs, services and employment including its policies, complaint processes, program accessibility, district facility use, accommodations and other Equal Employment Opportunity matters. The district also provides equal access to district facilities for all youth groups listed in Title 36 of the United States Code, including scouting groups. The following person has been designated to handle inquiries and complaints regarding unlawful discrimination, harassment, and retaliation: Tina Hatch, Compliance and Investigations/Title IX Coordinator, 440 East 100 South, Salt Lake City, Utah 84111, (801) 578-8388. You may also contact the Office for Civil Rights, Denver, CO, (303) 844-5695.