

Lower Merion School District

APPENDICIES TO ADMINISTRATIVE REGULATION 302: STANDARDS OF CONDUCT

APPENDIX A: Title IX Grievance Process

PURPOSE

The purpose of these procedures is to effectuate Title IX's prohibition against sex discrimination and to respond promptly and supportively to persons alleged to be victimized by sexual harassment, resolve allegations of sexual harassment promptly and accurately under a predictable, fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment, and effectively implement remedies for victims. These procedures apply only to complaints alleging discrimination prohibited by Title IX (including sexual harassment and sexual violence).

These procedures shall be available in every school site administrative office, posted on the District website, and included in student handbooks.

DEFINITIONS

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a District's Title IX Coordinator (identified in **Attachment A**) or any official of the District who has authority to institute corrective measures on behalf of the District, or to any employee of an elementary and secondary school.

Complainant means a student or employee of the District who is alleged to be the victim of conduct that could constitute sexual harassment.

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the District with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator in **Attachment A** and by any additional method designated by the District. As used in this paragraph, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the District) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

The Form attached as **Attachment B** may be used for the submission of the Formal Complaint but is not required.

Parties means Complainant(s) and Respondent(s).

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- A. An employee of the District conditioning the provision of an aid, benefit, or service of the District 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; or
- C. Sexual assault, dating violence, domestic violence, or stalking.

Sexual assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

Dating violence means violence committed by a person:

- A. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- B. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship.
 - ii. The type of relationship.
 - iii. The frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against

an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

A. Fear for his or her safety or the safety of others; or

B. Suffer substantial emotional distress.

Day, for the purpose of the calculation of days in complaint processing, except as otherwise expressly provided, shall exclude Saturdays, Sundays, and federal, state and school holidays or closures.

Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The District must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

GENERAL RESPONSE TO SEXUAL HARASSMENT

If and when the District obtains actual knowledge of sexual harassment in an education program or activity of the District against a person in the United States, it must respond promptly in a manner that is not deliberately indifferent. The District is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. "Education program or activity" includes locations, events, or circumstances over which the District exercised substantial control over both the respondent and the context in which the sexual harassment occurs. The District's response must treat complainants and respondents equitably by offering supportive measures as defined above to a complainant, and by following

its grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

Response to a formal complaint. In response to a formal complaint, the District must follow its grievance process. With or without a formal complaint, the District must comply with the previous subsection.

Emergency removal. Nothing in this process precludes the District from removing a respondent from the District's education program or activity on an emergency basis, provided that the District undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

Administrative leave. Nothing in this subpart precludes the District from placing a non-student employee respondent on administrative leave during the pendency of its grievance. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

BASIC REQUIREMENTS FOR GRIEVANCE PROCESS

This process requires the District to:

- A. Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent. Remedies must be designed to restore or preserve equal access to the District's education program or activity. Such remedies may include the same individualized services described elsewhere in this grievance process as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;
- B. Require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness;

- C. Require that any individual designated by the District as a Title IX Coordinator, investigator, decision maker, or any person designated by the District to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The District must ensure that Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of the District's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The District must ensure that decision makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth elsewhere in this grievance process. The District also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth elsewhere in this grievance process. Any materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;
- D. Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;
- E. Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the District offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;
- F. Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the District may implement following any determination of responsibility;
- G. State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal

complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment;

- H. Include the procedures and permissible bases for the complainant and respondent to appeal;
- I. Describe the range of supportive measures available to complainants and respondents; and
- J. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

PROCEDURAL REQUIREMENTS

- A. **Time Limits.** A complaint under this procedure should be filed as soon as possible after the time of occurrence and within 180 calendar days of the alleged violation(s) of Title IX. Failure of a complainant or appellant to comply with any time limitation in the complaint procedure may result in dismissal of the complaint and/or denial of the appeal. Dismissal shall not preclude the individual's right to pursue the complaint through other appropriate external agencies.
- B. **Notice of allegations.** Upon receipt of a formal complaint, the Title IX Coordinator must provide the following written notice to the parties who are known in the form (using **Attachment C**).
- C. **Dismissal of a formal complaint.**
 - 1. The District must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined above even if proved or did not occur in the District's education program or activity then the District shall dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX or this part; such a dismissal does not preclude action under another provision of the District's code of conduct. The District may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the District; or specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
 - 2. Upon a dismissal required or permitted pursuant to this section, the District must promptly send written notice (using **Attachment D**) of the dismissal and reason(s) therefor simultaneously to the parties.

D. **Consolidation of formal complaints.** A District may consolidate formal complaints as to 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. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.

E. **Investigation of a formal complaint.** When investigating a formal complaint and throughout the grievance process, the District must:

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the District and not on the parties provided that the District cannot access, consider, disclose, or otherwise use a party’s records that are 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 the provision of treatment to the party, unless the District obtains that party’s voluntary, written consent to do so for a grievance process under this section (if a party is not 18 years old then the District must obtain the voluntary, written consent of the party’s parent or guardian, surrogate parent or guardian ad litem);
2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
4. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
5. Provide, to a party whose participation is invited or expected, written notice (using **Attachment E**) of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;

6. 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 raised in a formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the District must send (using **Attachment F**) to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The District must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
7. Create an investigative report (using **Attachment G**) that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

F. **Hearings.** Hearings will be held at the discretion of the decision maker(s). With or without a hearing, after the investigator has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. With or without a hearing, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

G. **Determination regarding responsibility.**

1. The decision maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination (using **Attachment H**) regarding

responsibility. To reach this determination, the District must apply the clear and convincing standard of evidence.

2. The written determination must include:
 - a. Identification of the allegations potentially constituting sexual harassment;
 - b. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - c. Findings of fact supporting the determination;
 - d. Conclusions regarding the application of the District's code of conduct to the facts;
 - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the District imposes on the respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided by the District to the complainant; and
 - f. The District's procedures and permissible bases for the complainant and respondent to appeal.

The District must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The Title IX Coordinator is responsible for effective implementation of any remedies.

H. Appeals.

1. A District must offer both parties an appeal from a determination regarding responsibility, and from a District's dismissal of a formal complaint or any allegations therein, on the following bases:
 - a. Procedural irregularity that affected the outcome of the matter;
 - b. 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; and
 - c. The Title IX Coordinator, investigator(s), or decision maker(s) 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.
2. A District may offer an appeal equally to both parties on additional bases.
3. As to all appeals, the District must:

- a. Notify (using **Attachment I**) the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
 - b. Ensure that the decision maker(s) for the appeal is not the same person as the decision maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
 - c. Ensure that the decision maker(s) for the appeal complies with this section;
 - d. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
 - e. Issue a written decision describing the result of the appeal and the rationale for the result; and
 - f. Provide the written decision simultaneously to both parties.
- I. **Informal resolution.** A 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 complaints of sexual harassment consistent with this section. Similarly, a District may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the District may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the District:
1. Provides to the parties a written notice (using **Attachment J**) disclosing: the allegations, 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 any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
 2. Obtains the parties' voluntary, written consent to the informal resolution process; and
 3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
- J. **Recordkeeping.**
1. The District must maintain for a period of seven years records of:
 - a. Each sexual harassment investigation including any determination regarding responsibility, any 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;
 - b. Any appeal and the result therefrom;

- c. Any informal resolution and the result therefrom; and
 - d. All materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process. A District must make these training materials publicly available on its website, or if the District does not maintain a website the District must make these materials available upon request for inspection by members of the public.
2. For each complaint, a District must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the District must document (using **Attachment K**) 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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