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Title IX

What is Title IX?

Title IX is a term used to describe Federal law that addresses discrimination on the basis of sex within educational institutions: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

The Title IX law and resulting policy and procedures are used to prevent discrimination in educational institutions that receive federal funds. Title IX also governs the way in which institutions must handle accusations of sexual harassment to ensure that investigations are transparent and fair.

GLOSSARY OF TERMS

Actual Knowledge

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the School Division’s Title IX Coordinator or any official who has authority to institute corrective measures on behalf of the School Division, or to any employee of an elementary or secondary school.

1. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.
2. This standard is not met when the only official of the School Division with actual knowledge is the respondent.
3. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the School Division.

Case Assignment & Nomenclature

Cases will be assigned by year (i.e.: 201920) followed by the Title IX designator “IX,” the chronological number in which the case was received (i.e.: “-3”), and the Reporting Party’s last name followed by the school name in parentheses (i.e.: 201920IX-3 Smith (Albemarle)).

Complainant

Means any individual who is alleged to be the victim of sexual harassment

Conflict of Interest or Bias

Any individual designated by the School Division as a Title IX Coordinator, Investigator, Decision-Maker, or any person designated by the School Division to facilitate an informal resolution process, must not have a conflict of interests or bias for or against complainants or respondents generally or an individual complainant or respondent. The prohibition against bias and conflict of interests is intended to minimize premature judgment of the facts related to the grievance throughout the Title IX grievance process. It is also intended to minimize partiality in the decision-making process.
Consent

The School Division is responsible for determining when consent has been granted by a complainant to the alleged sexual harassment. When considering consent: Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless the 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.

Deliberate Indifference

If the School Division has actual knowledge of sexual harassment in an education program or activity of the School Division against a person in the United States, the School Division must respond promptly in a manner that is not deliberately indifferent. The School Division is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

Due Process/Grievance Process

Refer to the investigative and determination process as outlined in: 34 CFR § 106.45 Grievance process for formal complaints of sexual harassment - Code of Federal Regulations (ecfr.io)

Education Program or Activity

Education program or activity includes locations, events, or circumstances over which the School Division exercised substantial control over both the respondent and the context in which the sexual harassment occurs. “Program or activity” encompasses all of the School Division’s operations including, but not limited to: computer and internet networks; digital platforms and computer hardware or software owned or operated by, or used in the operations of, the School Division.

Emergency Removal

If an individual assessment reveals an immediate threat to the physical health or safety of any other student based on the allegations, interim removal is acceptable. The student who is removed must be given the chance to challenge the decision immediately after removal.

The School Division may remove a respondent from the School Division’s education program or activity on an emergency basis, provided that the School Division undertakes and 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 removal.

1. This 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.
2. Removal of a student or employee from an educational program or activity is appropriate when necessary to avoid a determination of a deliberately indifferent response to the complainant.
3. Emergency removals must not effectuate, in any way, a pre-judging of the allegations against the respondent, who is entitled to a presumption of non-responsibility pending the completion of a grievance process.
4. Emergency removal may happen whether a grievance process is underway or not.
5. The emergency situation must “arise from” alleged conduct that could constitute sexual harassment or could include the respondent’s related post-incident actions or behaviors.
6. An emergency situation is not limited to alleged sexual assault or rape, but could also be justified to address alleged severe, pervasive, and objectively offensive verbal or online harassment.
7. If a respondent’s actions pose an immediate and identified threat, but do not “arise from” allegations of sexual harassment (e.g., respondent brought a gun to school), then the Title IX regulations do not apply and the School Division may respond under its Code of Student Conduct, applicable policy or regulations, or applicable law.

**Formal Complaint**

A “formal complaint” is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. The phrase “document filed by a complainant” means a document or electronic submission (such as by e-mail or through an online portal provided for this purpose by the school) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

The formal complaint is a document that initiates the Division’s grievance process. However, a formal complaint is not required in order for the Division to have actual knowledge of sexual harassment or allegations of sexual harassment that invoke the Division’s legal obligation to respond promptly, including by offering supportive measures to a complainant.

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 School Division.

**Free Speech**

A school’s enforcement of Title IX must always be consistent with the first amendment right to free speech.

**Notice**

Once the Division has actual knowledge of sexual harassment or allegations of sexual harassment, the school has an obligation to respond. A school has actual knowledge when the Division has notice, from any person, that a person may have been victimized by sexual harassment.

- In elementary and secondary schools, a report to, or observation by, ANY Division employee puts the Division on notice.
- Reports may be verbal or written.
- Contact information for the Title IX Coordinator will be posted on the ACPS website and will be included in all student and employee handbooks such that the entire ACPS community is aware of how to report sexual harassment to the Title IX Coordinator.
Off-Campus Sexual Harassment

The School Division’s Title IX obligations extend to incidents of sexual harassment that occur off campus if any of these three conditions are met:

1. The off-campus incident occurs as part of the School Division’s operations in 20 U.S.C. 1687 and 34 C.F.R. 106.2(h), as amended; or
2. The School Division exercised substantial control over the respondent in the context of the alleged sexual harassment that occurred off-campus.

Parent / Guardian Rights

Parents and legal guardians who have existing legal rights (custodial rights to a minor child or guardianship or court order related to an adult student) to act on behalf of a complainant, respondent, party, or other individual are entitled to: exercise the rights granted to the party; report sexual harassment; request supportive measures; file a formal complaint; participate in the grievance process; accompany the student to meetings and interviews during the grievance process to exercise rights on behalf of the student, while the student’s advisor of choice may be a different person than the parent/guardian; and inspect and review evidence.

Range of Sanctions

Sanctions may only be imposed after a respondent has completed the grievance process. Following a determination of responsibility, remedies and sanctions may range from individual supportive measures to removal from traditional learning environments.

Respondent

Means any individual who is reported to be the perpetrator of sexual harassment.

Note: A person may be a complainant or a respondent even where no formal complaint has been filed and no grievance process is pending.

Responsible Employee

For the purposes of the Division, means any school employee. In elementary and secondary schools, notice to “any employee” triggers the Division’s response obligations.

Retaliation

ACPS prohibits retaliation against anyone for exercising their rights under Title IX. Any person who believes they have been retaliated against, intimidated, or threatened, may file a complaint with the Division. The Division will take prompt and equitable actions to resolve the concern.

School Board Policy

Violations of Title IX fall under the Division’s anti-discrimination policies JFHA and GBA http://esb.k12albemarle.org/com/browse.aspx which state:

The Albemarle County School Board is committed to maintaining an educational environment and workplace that is free from harassment. Through this policy and the enactment of the outlined procedures, the Albemarle County School Board prohibits harassment and bullying of any kind and with regard to any student or school personnel. In accordance with law, the Board prohibits harassment against students,
employees, or others on the basis of sex, gender*, race, color, national origin, disability, religion, ancestry, age, marital status, genetic information, sexual orientation** or any other characteristic protected by law or based on a belief that such characteristic exists at the Division or any Division sponsored activity.

**Sexual Harassment**

The phrase “Title IX sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

1. Quid pro quo harassment: An employee of the School Division conditioning the provision of an aid, benefit, or service of the School Division on an individual’s participation in unwelcome sexual conduct;
2. Hostile environment harassment: 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 School Division’s education program or activity; or
   a. Sexual assault: Any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of giving consent. Examples of sexual assault under Title IX:
      i. Rape: the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim, including instances in which the victim is incapable of giving consent.
      ii. Fondling: the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person’s will.
      iii. Incest: always considered sexual assault; nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
      iv. Statutory Rape: nonforcible sexual intercourse with a person who is under the statutory age of consent.
   b. Dating violence: violence committed by a person—
      i. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
      ii. where the existence of such a relationship shall be determined based on a consideration of the following factors:
         1. the length of the relationship.
         2. The type of relationship.
         3. The frequency of interaction between the persons involved in the relationship
   c. 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
   d. Stalking: engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
      i. fear for his or her safety or the safety of others; or
      ii. suffer substantial emotional distress
Span of Responsibility

Title IX covers sexual harassment that happens in the Division’s “education program or activity.” Responsibility spans beyond the school campus to include locations, events, and circumstances where the Division exercises substantial control over

- the context of the alleged harassment and
- the person accused of committing sexual harassment.

Standard of Evidence

The Division will use Preponderance of the Evidence as the standard to determine responsibility, under Title IX, for all grievance proceedings. Under the preponderance standard, the burden of proof is met when there is greater than 50% chance the allegation is true.

Supportive Measures

Supportive measures mean 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.

1. Such measures are designed to restore or preserve equal access to the School Division’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the School Division’s educational environment, or deter sexual harassment.

2. 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 parties, increased security and monitoring of certain areas of campus, and other similar measures.

3. The School Division will 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 School Division to provide the supportive measures.

4. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

5. Such measures must be offered to a complainant, regardless of whether a formal complaint has been filed, and may be offered to a respondent.

6. 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 filing a formal complaint, and explain to the complainant the process for filing a formal complaint.

7. The offering of supportive measures is intended to be an interactive process between the Title IX Coordinator and the person alleged to be the victim of sexual harassment. Failure to offer supportive measures may render the School Division’s response deliberately indifferent.

8. If the complainant refuses supportive measures that are not clearly unreasonable in light of the known circumstances, the School Division’s response will not be deemed deliberately indifferent.

9. If the Title IX Coordinator does not provide the complainant with supportive measures, then the Title IX Coordinator will document the reasons why such response is not clearly unreasonable in light of the known circumstances.
Roles in the Title IX Process

The following are roles that are used to facilitate the Title IX process.

- Title IX Coordinator is responsible for initiating investigations (Director of Student Services).
- Title IX Investigator is responsible for due process (Coordinator of Student Safety).
- Title IX Decision Maker(s) is responsible for adjudication (may not be the same person as either the Title IX Coordinator or investigator) (Executive Director of Special Education and Student Services).
- Appellate Decision Maker is responsible for adjudication of any appeal (may not be the same person as the Title IX Coordinator Decision Maker, or Investigator (Assistant Superintendent)

Reporting Sexual Harassment

How to Report

1. The Division’s Title IX Coordinator may be reached in person, by telephone, or through e-mail at any time:

   Mail: 401 McIntire Road, 3rd Floor, Charlottesville, VA 22902
   Phone: (434) 296-5885
   E-Mail: TitleIXComplaint@k12albemarle.org

2. A report may also be made through ANY Albemarle County Public School Employee, who must then report to the Division’s Title IX Coordinator (Director of Student Services).
3. Employees of the Division are required to report instances where they are witnesses to harassment, independent of an individual requesting the employee make a report.
4. For cases involving employees, contact Albemarle County Human Resources at 434-296-5827

Making a REPORT

A report of sexual harassment requires the Division to offer supportive measures to the complainant and inform them of the process for filing a formal complaint. *A report of sexual harassment does not, itself, trigger the formal complaint process. The filing of a formal complaint is addressed in the next section.

When the Division learns that someone is said to be the victim of sexual harassment (a report of sexual harassment), the Title IX Coordinator will:

- Promptly contact the person to discuss supportive measures;
- Consider that person’s wishes with respect to supportive measures;
- Coordinate with the Division to offer supportive measures;
- Inform the complainant that supportive measures are available with or without the filing of a formal complaint;
- Explain to the complainant the process of filing a formal complaint.
FORMAL COMPLAINTS

**Filing a formal complaint** requires the Division to follow a formal grievance process to determine whether the respondent is responsible for the alleged sexual harassment. A formal, written, complaint may be filed by a complainant or a person who has a legal right to file on their behalf, such as a parent. A formal complaint may also be signed by the Title IX Coordinator.

Regardless of the reporting option chosen, the reporting party has the right to Supportive Measures designed to restore or preserve access to the Division’s educational program or activity, to protect the safety of all involved safety, and to deter further sexual harassment.

*Note: Reporting under Title IX is distinct and separate from reporting sexual assaults and other crimes to law enforcement.*

PROCEDURES

**Principal’s Response to Allegations of Sexual Harassment**

A school may learn that someone is said to be the victim of sexual harassment through:

- A direct report from the subject of the alleged harassment or their responsible adult
  
  OR
  
- As witnesses to harassment (even if the harassment is not reported to that Division employee, they are considered to have notice of allegations of sexual harassment in an education program or activity).

When the Division learns that someone is said to be the victim of either student on student or employee on student, or employee on employee sexual harassment, it must immediately contact the Title IX Coordinator. This does not preclude school staff from contacting the Department of Human Resources or even law enforcement, in such cases.

Whichever the context, supportive measures may be offered to both Complainant and Respondent (this process is coordinated by the Title IX Coordinator).

The Division may remove a respondent from the educational program or activities only on an emergency basis: *Only in circumstances where the school determines there is an immediate threat to the physical health or safety of a student or other individual arising from the allegations of sexual harassment, may the Division remove a respondent from the education program or activity on an emergency basis. In such a situation, the Division must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.*

*If the respondent is a Division employee, the Division may decide to place that employee on administrative leave during the investigation.*

If the actions reported meet the standards for sexual assault, dating violence, domestic violence, or stalking, the Title IX Coordinator, will contact the Albemarle County Police Department.
Response to a REPORT of Sexual Harassment

When a REPORT is made directly to the Title IX Coordinator:

☐ Title IX Coordinator Contacts the reporting party to obtain a description of the alleged incident.

☐ The Coordinator then establish a formal case file and assigns case identifier.

    NOTE: It is the Title IX Coordinator’s responsibility to maintain and retain this file according to federal regulations (reference section: Retention of Records).

☐ Title IX Coordinator promptly contacts the individual alleging sexual harassment and confidentially discusses the available options for resolution and support, including:

   • Supportive measures (with or without the filing of a formal complaint) to restore access to the Division’s educational program or activity
   • The process for filing a formal complaint (grievance process)
   • Options for informal resolution
   • Rights to an advisor if pursuing resolution
   • Reporting to law enforcement

☐ Title IX Coordinator discerns whether the allegation has any merit based on the definition of sexual harassment under Title IX 34 CFR § 106.30 Definitions - Code of Federal Regulations (ecfr.io)


   • If it is determined the conditions for one of these standards is met, contact Albemarle County Police Department at 434-977-9041

☐ Title IX Coordinator contacts the appropriate administrator (i.e. school principal, department director, etc.) regarding implementation of supportive measures (the Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures).

   • Supportive measures may also be offered to the individual accused of the sexual harassment.

☐ If the Complainant elects not to file a Formal Complaint, but the allegations appear to constitute sexual harassment and the School Division intends to discipline the Respondent for the behavior, the Title IX Coordinator must sign a Formal Complaint and institute the grievance process.

☐ If the alleged incident involves actions against a student by an employee, the School Division will immediately forward the complaint to the Department of Human Resources, and CPS/Law Enforcement, if appropriate.
Maintaining a Case File

Regardless of whether the complainant chooses to disregard all options or to engage in the formal grievance process, it is the Title IX Coordinator’s responsibility to maintain the case file according to federal regulations (reference section: Retention of Records). This responsibility includes taking appropriate steps to retain the case file for at least the minimum time required by law.

*In cases where an alleged victim does not file a formal complaint, the Title IX Coordinator may initiate grievance procedures where discipline is appropriate. In such cases, the Title IX Coordinator in not treated as the complainant or as a party to the grievance process.

Cases should be coded for quick reference and included in the body of each step of the Formal Title IX grievance process. It is recommended that case files be coded as such: TitleIX:<SchoolYear><First two Letters of First Name / First two letters of Last Name of Complainant><Sequence Number of Received Formal Complainant>. An example of this format would look like this for the first case of the 21-22 school year with a complainant of Chris Doe: TitleIX:21-22:ChDo:1

Response to a FORMAL COMPLAINT of Sexual Harassment

Written Notification (SCHLS-IX.06)

Upon receipt of a FORMAL COMPLAINT, the Title IX Coordinator must provide the following written notice to the parties who are known, to include:

- Notice of the division’s grievance process, including statements regarding:
  - The informal resolution process;
  - Reasonably prompt time frames;
  - The standard of evidence (preponderance of the evidence) to be used to determine responsibility;
  - Procedures and permissible bases for the complainant and respondent to appeal;
  - A description of the range of supportive measures available to the complainant and the respondent;

- Notice of the allegations of sexual harassment, including sufficient details known at the time:
  - Identities of the parties involved in the incident;
  - The conduct allegedly constituting sexual harassment;
  - The date and location of the alleged incident;

- A statement that the respondent is presumed not responsible for the alleged conduct and that determination of responsibility is made at the conclusion of the grievance process.

- Information that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.

- A statement that the parties may inspect and review evidence.

- Notice to the parties that the Division’s code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
After Providing Written Notification, the Title IX Coordinator shall:

- Not conduct any initial interview with the respondent until after the Written Notice of the Formal Complaint has been provided to the respondent. The Title IX Coordinator must give the respondent sufficient time to prepare before an initial interview after receiving the written notice.
- Establish a formal case file, assign case identifier*, and ensure a copy of the afore mentioned notice, the formal request by the complainant, and any details regarding the case are placed in that case file.
- Assign the case to an investigator(s) and meet with that investigator(s) to brief on details surrounding the allegations.

During the investigation phase, the Title IX Coordinator shall ensure:

- All parties are notified if the formal complaint becomes subject to mandatory or discretionary dismissal.
- Written notice is provided each time a party’s participation is invited or expected for a meeting or hearing.
- Both parties are provided equal opportunity to review and respond to the evidence gathered during the investigation.
- Both parties are sent the investigative report summarizing the relevant evidence prior to reaching a determination regarding responsibility.

Following a determination of responsibility by a respondent:

- Provide remedies to the complainant designed to restore or preserve the complainant’s equal educational access and, if appropriate,
- Impose disciplinary sanctions on the respondent.
- Records and documentation concerning sexual harassment reports, formal complaints, investigations, and adjudications are kept up to date and retained according to Federal and State regulations (reference section: Retention of Records).

Note: Filing a formal complaint is the only way disciplinary sanctions may be imposed on a respondent under the Title IX rule. However, in circumstances where the Division determines there is an immediate threat to the physical health or safety of a student or other individual arising from the allegations of sexual harassment, the Division may remove a respondent from the education program or activity on an emergency basis. In such a situation, the Division must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.

Mandatory Dismissals of a Formal Complaint (SCHLS-IX.13)
The Division must investigate every formal complaint; however, the Division is required to dismiss any complaint:

- That does not describe conduct that meets the definition of sexual harassment
- That alleges sexual harassment that did not occur in the school’s education program or activity
- That alleges sexual harassment that did not occur in the United States
Albemarle County Public Schools – Title IX Procedures

Even if the misconduct does not meet the criteria for sexual harassment under Title IX, these complaints may nevertheless be addressed under the Code of Virginia and/or under the Albemarle County School Board Policies and codes of conduct.

Discretionary Dismissals of a Formal Complaint (SCHLS-IX.14)
The Division may dismiss a complaint under the following conditions:

- The complainant notified the Title IX Coordinator, in writing, that the complainant wishes to withdraw the formal complaint or some of its allegations
- If the respondent is no longer enrolled in or employed by ACPS
- If specific circumstances prevent the gathering of evidence sufficient to reach a determination about the allegations

Dismissals are handled by the Title IX Coordinator. Dismissal of a formal complaint or any of the allegations within, whether mandatory or discretionary, will be promptly communicated through written notice of the dismissal and the reasons to both parties. Both parties retain the right to appeal any dismissal. For all dismissals, the Title IX Coordinator, on behalf of the Division, will include the following documentation in the formal case file:

- The reasons for dismissal and
- Notification sent to both parties of the right to appeal any dismissal.
Title IX Due Process/Formal Grievance Process

Due process must be conducted according to the requirements set forth in: [34 CFR § 106.45 Grievance process for formal complaints of sexual harassment - Code of Federal Regulations (ecfr.io)]

Due Process Guidelines and Guarantees

- The Division, and not the parties, has the burden to gather evidence sufficient to reach a determination regarding responsibility regarding allegations made in the complaint. However, parties are not prevented from discussing the allegations or from gathering and presenting evidence of their own.
- The grievance process must treat complainants and respondents equitably.
- The grievance process ensures an objective evaluation of all relevant evidence— including that which is inculpatory and exculpatory.
- Individuals involved in the process (Title IX Coordinators, investigators, decision-makers, or facilitators) will be trained and will carry out their responsibilities free of bias or conflict of interest. Training materials will be made available to the public on the Division’s website.
- Credibility will not be determined on the basis of a person’s status as a complainant, respondent, or witness.
- Under the Division’s grievance process, the respondent will be presumed not responsible. Any finding of responsibility will only come at the conclusion of the formal grievance process.
- The grievance process will maintain reasonably prompt time frames for resolution.
- Both parties are guaranteed equal opportunity to choose advisors to help them and to have their advisor present with them during meetings, interviews, and all other proceedings.
- Both sides must have equal opportunity to review and respond to the evidence gathered during the investigation. The Division must provide all relevant evidence to the parties and give them at least ten (10) days to review and respond to the evidence before the school can circulate an investigative report. Then, the parties must be given an additional ten (10) days after the issuance of the investigative report before the hearing or other grievance proceeding occurs.
- No information protected by legal privilege, such as attorney-client or doctor-patient privilege, will be used during an investigation unless the person holding that privilege has waived that right. Similarly, neither party nor the school is permitted to seek, permit questions about, or allow the introduction of evidence that is protected by a recognized privilege.
- Written notice is provided when a party’s participation is invited or expected for an interview or meeting. This notice includes information regarding participants and purpose of such meetings and interviews.
- Complainant(s), Respondent(s), and any identified witnesses will be interviewed. This may require follow up interviews.
- Complainants and respondents will be treated equitably and without bias.
- Parties will be provided equal opportunity to present facts and expert witnesses and other inculpatory and exculpatory evidence.
- Parties will not be prevented from discussing the allegations and gathering evidence of their own.
Under the Formal Grievance process, the Title IX Investigator will conduct the investigation and will provide the Title IX Coordinator and Decision Maker with a FINAL investigative report.

Prior to the FINAL report, a DRAFT report will be provided to the Title IX Coordinator, who will ensure both complainant and respondent parties are provided a copy of the DRAFT investigative report and advised, in writing, that written responses to the report will be accepted and considered up to five (5) business days from the time of notice.

The Investigator will be responsible for addressing written responses from either party and for creating the FINAL case report.

The Coordinator will also ensure the Finalized report is circulated to all parties at least five (5) days prior to determination of responsibility.

Reference: Title IX Due Process checklists for Investigator and Coordinator.

**Title IX Final Determination**

The person deciding a sexual harassment case must not be the same person who received the formal complaint or investigated it, including the Title IX Coordinator

**UOCR regulations require the Title IX Decision Maker(s):**
- Must not be the same individuals as the Title IX Coordinator or investigator.
- Must give each party an equal opportunity to submit relevant written questions for the other parties and witnesses to answer before the Decision Maker reaches a determination regarding responsibility.
- Must allow relevant questions to be exchanged (with legal limitations regarding privileged information).
- May offer and facilitate informal resolutions, but only with the voluntary, written consent of both parties.

The Decision Maker will objectively evaluate the relevant evidence and reach conclusions whether the respondent is responsible for the alleged sexual harassment by applying the preponderance of the evidence standard.

After the evidence has been weighed, the determination must be written and sent to both parties, simultaneously.

The written determination must include:

1. The portion(s) of the Albemarle County School Board’s policies that were violated
2. A detailed description of the procedural steps that were taken by the school on the way to making the final determination, including but not limited to, notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence.
3. A findings of fact section
4. A section that draws conclusions after applying the facts to the portion of the applicable school policy
5. A statement and rationale for the ultimate determination of responsibility
6. Any disciplinary sanctions that the Division will impose on the respondent as well as a statement as to whether the Division will provide remedies to the complainant*
7. A statement and rationale for any remedies for the complainant, addressing how these remedies will restore or preserve equal access.
8. A statement of the school’s procedures regarding determination of responsibility and the right of both parties to appeal the initial determination of responsibility. This must include the permissible bases for appeal.

Written determination is to be provided to both parties simultaneously.

The written determination is finalized:
1. If neither party chooses to appeal the final determination within five (5) business days; or
2. Following the appellate process.

Copies of the finalized report are sent to the Division Superintendent and to the Coordinator, who shall ensure the case file is up to date and retained for a minimum of seven (7) years.

*The Title IX Coordinator is responsible for effectively carrying out the remedies contained in the written decision.

**Appeals**

The appellate review will be presided over by a designated decision maker. *The Decision Maker in an appeal cannot be the Decision Maker who made the initial determination of responsibility.*

**Filing an appeal**

Appeals may be filed, in writing, by either party within five (5) business days of the final determination. Written appeals should be sent to the Title IX Coordinator. Appeals may only be filed on the bases of:
- A procedural irregularity that affected the outcome of the matter
- Newly discovered evidence
- Bias or conflict of interest affected the outcome

**Appellate process**

The Appellate Decision Maker must notify both parties, in writing, that the determination of responsibility is under review and inform both of their right to submit a written statement within five (5) business days of the issuance of the notice of appeal either supporting or challenging the outcome.

After considering the parties’ written statements, the Decision Maker on appeal will decide if the Decision Maker’s Final Determination is either **upheld** or **overturned**, and will issue a written statement to be sent to the parties simultaneously.

The Appellate Decision Maker’s determination about whether the respondent is responsible for the sexual harassment allegations becomes final after the appeal process.

At the conclusion of the appellate process, the Title IX Coordinator will maintain responsibility for dissemination of the report to both parties and to the Superintendent, coordinate with the school to provide remedies to the complainant designed to restore or preserve the complainant’s equal educational access, and impose any disciplinary sanctions deemed appropriate by the Decision Maker against the respondent.

Additionally, the Coordinator will ensure the appellate decision is documented in the case file; proper documentation of all sexual harassment reports, formal complaints, investigations, and adjudications; and
that the closed case file is retained for a period of no less that seven (7) years (reference: Title IX Post-Final Determination Checklist).

**Retention of Records**

All records pertaining to Title IX reports, complaints, and investigations will be maintained by the Title IX Coordinator, per federal regulation, for a period no less than seven (7) years, including:

- Records of investigation including any determination of responsibility, records of any discipline imposed on a respondent and remedies offered to a complainant.
- Records of any appeal and the materials associated with an appeal.
- Records of any informal resolution process.
- All materials used to train Title IX Coordinators, investigators, decision makers and any person(s) who facilitate informal resolutions. These materials must also be made available for public inspection on the division’s website.
- Records of supportive measures taken in response to any reports or complaints of sexual harassment, even in cases where the alleged victim of sexual harassment chooses not to file a formal complaint. Particularly in these cases, the Division must document
  - The basis for belief that it was not deliberately indifferent
  - that it took measures to restore or preserve equal access to its education program or activity

**Informal Resolutions**

The Division may offer informal resolution options in appropriate cases. The **exception** to this is where the respondent is an employee of the division.

Informal resolution may only be attempted if all parties enter the process completely voluntarily and in writing. Parties will never be forced or required to enter into informal resolution.

If the parties enter into an informal resolution process, the Title IX Coordinator will:

- Ensure such informal resolution only occurs with the voluntary, written consent of both parties
- Document the written requests and informs all involved parties in writing
- Assign a trained mediation/restorative justice expert who is free from conflicts of interest or bias to work with both parties.
- Provide complainants and respondents with written notice of
  - the allegations
  - their rights
  - information about whether the informal process is confidential
  - information about withdrawing from the informal process
- Ensure reasonably prompt timelines are maintained.

At the conclusion of the informal resolution process, document all correspondence, any resolutions agreed upon through mediation, and ensure proper retention of records (see: Title IX Retention of Records).
APPENDIX: Process Checklists

Reporting Sexual Harassment Under Title IX

If you believe you have been the subject of sexual harassment in the school setting you may make a report to:

- Any school employee
- The Albemarle County Public Schools Title IX Coordinator
  Director of Student Services
  401 McIntire Road, 3rd Floor,
  Charlottesville, VA 22902
  Phone: 434-296-5885
  E-Mail: TitleIXComplaint@k12albemarle.org

If you are a staff member who has become aware of, witnessed, or suspects an act of sexual harassment has taken place, you must contact:

- Albemarle County Public Schools Title IX Coordinator,
  Director of Student Services
  401 McIntire Road, 3rd Floor,
  Charlottesville, VA 22902
  Phone: 434-296-5885
  E-Mail: TitleIXComplaint@k12albemarle.org

Contact your school’s principal, a teacher, or a trusted school employee

Contact Albemarle County Human Resources at 434-296-5827

Principal’s Response to Title IX Allegations

Whether through a direct report or as witness, when a school administrator learns that someone is said to be the victim of sexual harassment, they must immediately contact the division Title IX Coordinator:

Albemarle County Public Schools Title IX Coordinator
Director of Student Services
401 McIntire Road, 3rd Floor,
Charlottesville, VA 22902
Phone: 434-296-5885

E-Mail: TitleIXComplaint@k12albemarle.org
Title IX Coordinator’s Response to a REPORT of Sexual Harassment

When a REPORT is made directly to the Title IX Coordinator:

☐ Create a Case File
☐ Title IX Coordinator Contacts the reporting party to obtain a description of the alleged incident.
☐ The Coordinator then establishes a formal case file and assigns case identifier.

NOTE: It is the Title IX Coordinator’s responsibility to maintain and retain this file according to federal regulations (reference section: Retention of Records).

☐ Title IX Coordinator promptly contacts the individual alleging sexual harassment and confidentially discusses the available options for resolution and support including:
  • Supportive measures (with or without the filing of a formal complaint) to restore access to the Division’s educational program or activity
  • The process for filing a formal complaint (grievance process)
  • Options for informal resolution
  • Rights to an advisor if pursuing resolution
  • Reporting to law enforcement

☐ Title IX Coordinator discerns whether the allegation has any merit based on the definition of sexual harassment under Title IX 34 CFR § 106.30 Definitions - Code of Federal Regulations (ecfr.io)

  • If it is determined the conditions for one of these standards is met, contact Albemarle County Police Department at 434-977-9041

☐ Title IX Coordinator contacts the appropriate administrator (i.e. school principal, department director, etc.) regarding implementation of supportive measures (the Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures).
  • Supportive measures may also be offered to the individual accused of the sexual harassment.
Title IX Coordinator’s Response to a FORMAL COMPLAINT

Upon receipt of a FORMAL COMPLAINT, the Title IX Coordinator must:

Written Notification

☐ Upon receipt of a FORMAL COMPLAINT, the Title IX Coordinator must provide the following written notice to the parties who are known, to include:

- Notice of the division’s grievance process, including statements regarding:
  - The informal resolution process;
  - Reasonably prompt time frames;
  - The standard of evidence (preponderance of the evidence) to be used to determine responsibility;
  - Procedures and permissible bases for the complainant and respondent to appeal;
  - A description of the range of supportive measures available to the complainant and the respondent;
- Notice of the allegations of sexual harassment, including sufficient details known at the time:
  - Identities of the parties involved in the incident;
  - The conduct allegedly constituting sexual harassment;
  - The date and location of the alleged incident;
- A statement that the respondent is presumed not responsible for the alleged conduct and that determination of responsibility is made at the conclusion of the grievance process.
- Information that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
- A statement that the parties may inspect and review evidence.
- Notice to the parties that the Division’s code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

After Providing Written Notification, the Title IX Coordinator shall:

☐ Not conduct any initial interview with the respondent until after the Written Notice of the Formal Complaint has been provided to the respondent. The Title IX Coordinator must give the respondent sufficient time to prepare before an initial interview after receiving the written notice.

☐ Establish a formal case file, assign case identifier*, and ensure a copy of the afore mentioned notice, the formal request by the complainant, and any details regarding the case are placed in that case file.

☐ Assign the case to an investigator(s) and meet with that investigator(s) to brief on details surrounding the allegations.

Note: Filing a formal complaint is the only way disciplinary sanctions may be imposed on a respondent under the Title IX rule. However, in circumstances where the Division determines there is an immediate threat to the physical health or safety of a student or other individual arising from the allegations of sexual harassment, the Division may remove a respondent from the education program or activity on an emergency basis. In such a situation, the Division must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.
Due Process Responsibilities: Title IX Coordinator

Prior to interviews or meetings:
☐ Provide written notice when a party’s participation is invited or expected for a meeting.

Following completion of the DRAFT investigative report:
☐ Send electronic or hard copy DRAFT report to complainant and respondent
☐ Wait ten (10) calendar days for both parties to review and respond to the DRAFT report
☐ Return the report to Title IX Investigator to address responses from both parties.

Following completion of the FINAL investigative report, but prior to review by the Decision Maker:
☐ Send electronic or hard copy FINAL report to complainant and respondent
☐ Notify both parties, in writing, of their right to submit written questions for the other parties and witnesses to answer
☐ Hold the process for five (5) business days to allow for questions
☐ Notify both parties, in writing, of any questions submitted by the other party and their right to respond within five (5) days.
☐ Hold the process for five (5) business days to allow for responses’
☐ Forward final report to the Title IX Decision Maker and include:
  • All questions/responses from the complainant’s and respondent’s parties
  • All written notifications to both parties

Monitor the case for circumstances that would require a mandatory dismissal or warrant a discretionary dismissal.

☐ Dismissal of a formal complaint or any of the allegations within will be promptly communicated to both parties through written notice and must include
  • The reasons for dismissal and
  • Notification to both parties of the right to appeal any dismissal
Title IX Due Process – Investigator

☐ Conduct the investigation according to the requirements set forth in: 34 CFR § 106.45 Grievance process for formal complaints of sexual harassment - Code of Federal Regulations (ecfr.io)

☐ Review known details of complaint with Title IX Coordinator

☐ Interview complainant (include counselors as appropriate)
  • Send written notice of interview to complainant, parent(s)/guardian(s)
  • Retain notes

☐ Interview respondent (include counselors as appropriate)
  • Send written notice of interview to respondent/parent(s)/guardian
  • Retain notes

☐ Interview witness(es) (include counselors as appropriate)
  • Send written notice of interview to witness(es)/parents/guardians
  • Retain notes

☐ Determine the need for follow up interviews
  • Send notice of interview to witness(es)/parents/guardians
  • Conduct follow-up interviews as needed (include counselors as appropriate)
  • Retain notes

☐ Update the Title IX Coordinator

☐ Complete DRAFT report of findings

☐ Forward copy to Title IX Coordinator for review and dissemination to parties

☐ Wait 10 days for both parties to review and respond to DRAFT report

☐ Address responses from both parties

☐ Complete Final Report of Findings & forward to:
  • Title IX Decision Maker
  • Title IX Coordinator
Final Determination by Decision Maker

Prior to making a final determination, The Title IX Decision Maker(s):

☐ Must ensure each party has been allowed an equal opportunity to submit written questions for the other parties and witnesses to answer before making a final determination

☐ May offer and facilitate informal resolutions, but only with the voluntary, written consent of both parties

Final Determination:

☐ Objectively evaluate the relevant evidence and reach conclusions whether the respondent is responsible for the alleged policy violation of sexual harassment by applying the standard of evidence, then:

☐ Issue a written determination regarding responsibility which must include:
  • Identification of the allegations potentially constituting sexual harassment as defined in § 106.30
  • A description of the procedural steps taken from receipt of the formal complaint through determination including any:
    o Notifications to the parties,
    o Interviews with parties and witnesses,
    o Site visits,
    o Methods used to gather other evidence
    o Findings of fact supporting the determination
    o Conclusions regarding the application of the Division’s code of conduct to the facts
  • A statement of, and rationale for, the results to each allegation, including a determination of responsibility including
    o Any disciplinary sanctions to be imposed on the respondent
    o And remedies designed to restore or preserve equal access to the Division’s education program or activity that will be provided by the Division to the complainant

Procedures and permissible bases for the complainant and respondent to appeal

☐ Provide the written determination to both parties simultaneously

☐ Hold the process for five (5) business days to allow for appeal.

☐ After the five (5) day hold period, forward a copy of the final determination to:
  • The Superintendent
  • The Title IX Coordinator (to be filed and retained)

If one or both parties APPEAL the decision:

☐ Notify both parties, in writing, that the determination of responsibility is under review and
  • Inform both of their right to submit a written statement within five (5) business days of the issuance of the notice of appeal either supporting or challenging the outcome.
  • Forward the case file, including notice of right of response to appeal, to the Appellate Decision Maker.
Title IX Appellate Review

The appellate review may not be made by the same decision maker that made the final determination

The Appellate Decision Maker will:

☐ Ensure the appeal was received, in writing, within five (5) business days of the issuance of the Final Decision.

☐ Ensure the appeal was made, specifically, on one of the permissible bases for appeal:
  - That there were **procedural deficiencies**
  - That **newly discovered evidence** would affect the outcome of the decision
  - That **bias or conflict of interest** affected the outcome

☐ Ensure both parties have been notified, in writing, that the determination of responsibility is under review and were informed of their right to submit a written statement within five (5) business days of the issuance of the notice of appeal either supporting or challenging the outcome.

☐ After the five (5) days, review the case based on the specific point of appeal in question.

☐ After considering each party’s written statements, the Appellate Decision Maker will:
  - Issue a written determination stating the Decision Maker’s Final Determination is either:
    - Upheld or
    - Overturned

☐ The report is returned to the Title IX Coordinator for
  - Dissemination to the superintendent
  - Dissemination to the complainant and respondent
  - Follow up action required at the school

Title IX Post-Final Determination (Coordinator)

Following the Decision Maker’s final determination of responsibility or resolution of the appeal process by the Appellate Decision Maker, the Title IX Coordinator will:

☐ Receive the finalized report from the responsible Decision Maker.

☐ Send a copy of the final determination to the Division Superintendent.

☐ Send written copies of the final determination to both the complainant and the respondent, simultaneously.

☐ Coordinate with the school to provide remedies to the complainant designed to restore or preserve the complainant’s equal educational access.

☐ If determined appropriate, impose disciplinary sanctions on the respondent.

☐ Ensure proper documentation of all sexual harassment reports, formal complaints, investigations, and adjudications.

☐ Ensure proper retention of records (see Title IX Retention of Records).
Title IX Retention of Records (Coordinator)

Retention of Records
☐ ALL records pertaining to Title IX reports and formal complaints will be maintained for a period no less than seven (7) years, including:
☐ Records of investigation including
  • any determination of responsibility,
  • records of any discipline imposed on a respondent and
  • remedies offered to a complainant.
☐ Records of any appeal and the materials associated with an appeal.
☐ Records of any informal resolution process.
☐ Records of supportive measures taken in response to any reports or complaints of sexual harassment, even in cases where the alleged victim of sexual harassment chooses not to file a formal complaint. In such cases, the school must document:
  • The basis for belief that it was not deliberately indifferent
  • That it took measures to restore or preserve equal access to its education program or activity

Title IX Informal Resolution

Note: Informal resolution is not an option where the respondent is an employee of the school division.

If informal resolution is chosen by the involved parties, the Title IX Coordinator will be responsible for ensuring the process meets the following criteria:
☐ The complainant enters the process completely voluntarily and in writing
☐ The respondent enters the process completely voluntarily and in writing
☐ Document the written requests and
☐ Inform all involved parties in writing of the agreement to enter into informal resolution
☐ Assign a trained mediation/restorative justice expert who is free from conflicts of interest or bias, to work with both parties.
☐ Provide mediator with case information
☐ Provide complainants and respondents with written notice of
  • the allegations
  • their rights
  • information about whether the informal process is confidential
  • information about withdrawing from the informal process
☐ Ensure reasonably prompt timelines are maintained in the informal resolution process
☐ At the conclusion of the informal resolution process,
☐ Document all correspondence and
☐ Document any resolutions agreed upon through mediation
☐ Ensure proper retention of records (see: Title IX Retention of Records)