

TITLE IX SEXUAL HARASSMENT FORMAL COMPLAINT GRIEVANCE PROCESS *Policy Code:1725/4035/7236-R*

The process provided in this policy is designed for those who believe that they have been sexually harassed in violation of policy 1725/4035/7236, Title IX Sexual Harassment – Prohibited Conduct and School System Response, and wish to file a formal complaint. School officials shall follow the grievance process established in this policy when responding to all formal complaints of sexual harassment as that term is defined by Title IX.

The Title IX Coordinator is responsible for notifying students and their parents or legal guardians, employees, and applicants for employment of this policy and ensuring that each principal or site supervisor provides a copy of this policy to these persons.

A. FILING A FORMAL COMPLAINT TO INITIATE THE GRIEVANCE PROCESS

A formal complaint initiates the grievance process. To be eligible to file a formal written complaint, the complainant must be participating in or attempting to participate in the education program or activities of the school system at the time of filing. If the complainant does not wish to file a formal complaint and the matter has not been adequately resolved through the provision of supportive measures, the Title IX coordinator may initiate the grievance process by signing a formal complaint. In accordance with law, only the complainant and the Title IX coordinator may initiate the formal complaint grievance process; no other individuals or school officials shall have authority to do so.

School officials will initiate the grievance process regardless of when the formal complaint is submitted, but delays in reporting may significantly impair the ability of school officials to investigate and respond to the allegations.

The formal complaint may be filed with the Title IX coordinator in person, by mail, or by email, and should be submitted on forms provided for that purpose. Complaint forms may be obtained from the Title IX coordinator or on the school system website.

The Title IX Coordinator may consolidate formal complaints where the allegations of sexual harassment arise out of the same facts or circumstances. The Title IX coordinator shall advise the complainant if the formal complaint will be consolidated with others.

B. DISMISSAL OF FORMAL COMPLAINT

The Title IX coordinator shall review the allegations and determine whether the formal complaint must be dismissed without further investigation because the conduct alleged in the formal complaint, even if assumed true, would not constitute sexual harassment under Title IX, did not occur in the school system's education program or activities, or did not occur against a person in the United States. Such a dismissal does not preclude action

under another provision of the Code of Student Conduct, board policy, or expected standards of employee behavior.

The Title IX coordinator may also dismiss the formal complaint or any allegations therein if at any time during the investigation or decision-making process: (1) the complainant notifies the Title IX coordinator in writing that he or she would like to withdraw the formal complaint or any allegations therein; (2) the respondent is no longer enrolled or employed by the school system; or (3) specific circumstances prevent school officials from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal for any reason, the Title IX coordinator shall promptly send written notice of the dismissal and reason(s) for such dismissal. The parties have the right to appeal the decision as provided in Section H.

The Title IX coordinator shall refer the matter that was the subject of the dismissed complaint to the principal or the HR Department for further action as warranted.

C. INFORMAL RESOLUTION

Informal resolution processes are available to resolve some formal complaints of sexual harassment without a full investigation and adjudication. Informal resolution is not available unless a formal complaint is filed and will not be used to resolve formal complaints alleging that an employee sexually harassed a student. Further, school officials shall never condition an individual's enrollment, employment, or other rights on an agreement to waive the individual's right to a formal investigation and adjudication of a formal complaint.

The Title IX coordinator may offer the parties an informal process to resolve a formal complaint at any time prior to reaching a final determination regarding responsibility. Before using an informal resolution process, school officials must ensure that both parties have given voluntary, informed, written consent to attempt informal resolution.

Any agreement reached by the parties through informal resolution may include measures that are designed to restore or preserve the parties' equal access to the education program and activities, including measures that may be punitive or disciplinary in nature.

Any informal process should be completed within a reasonable period of time, not to exceed 60 days from filing the complaint unless special circumstances necessitate more time. 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.

D. DESIGNATION OF TITLE IX INVESTIGATOR

If the complaint may proceed, the Title IX coordinator shall notify the appropriate investigator, who shall investigate the formal complaint.

In order to provide a neutral and objective investigation, the investigator shall not be a party to the complaint under investigation. The investigator of a formal complaint is ordinarily determined as described below; however, the Title IX coordinator, in consultation with the superintendent or designee, may determine that conflict of interest, bias, or other individual circumstances warrant the assignment of a different investigator.

1. If the respondent is a student, the investigator is the principal or designee of the school with jurisdiction over the incident.
2. If the respondent is an employee or applicant for employment, the investigator is the senior human resources official or designee.
3. If the respondent is neither a student nor an employee/applicant for employment, the principal of the school/site supervisor at which the complainant is enrolled or employed shall be the investigator.
4. Notwithstanding the above designations, (1) if the respondent is the senior human resources official, the superintendent shall investigate the complaint; (2) if the respondent is the superintendent or a member of the board, the Title IX coordinator shall immediately notify the board chair who shall direct the board attorney to investigate, unless the board chair determines that outside counsel should be engaged to investigate.

E. INVESTIGATION

The investigator is responsible for gathering evidence sufficient to reach a determination of whether the allegations in the formal complaint are true and whether the facts as determined by the investigator establish that sexual harassment as defined in this policy occurred. In so doing, the investigator shall impartially, promptly, and thoroughly investigate the complaint.

1. The investigator shall explain the process of the investigation to the complainant and respondent.
2. The investigator shall interview all individuals who may have relevant information, including (1) the complainant; (2) the respondent; (3) individuals identified as witnesses by the complainant or respondent; and (4) any other individuals who are thought possibly to have relevant information. Prior written notice shall be provided to a party whose participation is invited or expected for any investigative interview or meeting. The investigator shall provide the complainant and respondent an equal opportunity to present fact and expert witnesses and other evidence tending to prove or disprove the allegations.
3. At any meeting or interview with the Investigator, a complainant or respondent may bring a personal adviser. The personal adviser may not speak on behalf of the complainant or respondent during any meeting with the Investigator. The adviser

may be asked to leave if he or she does not comply with the directives of the Investigator. If the complainant or respondent plans to bring an attorney as his or her personal advisor, notification to the Investigator must be provided so that an attorney for the school system may attend the meeting, and the meeting may be rescheduled if necessary.

4. The investigator shall ensure that the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the school system and not on the complainant or respondent.
5. The investigator shall not restrict the ability of either party to gather and present relevant evidence or to discuss the allegations under investigation.
6. The formal complaint and the investigation will be kept confidential to the extent possible and as required by law. Information may be shared only with individuals who need the information in order to investigate and address the complaint appropriately and those with a legal right to access the information. Any requests by the complainant or respondent for further confidentiality will be evaluated within the context of the legal responsibilities of the school system.

F. INVESTIGATIVE REPORT AND OPPORTUNITY TO REVIEW EVIDENCE

1. The investigator shall prepare an investigative report that fairly summarizes the relevant evidence.
2. Before completing the final report, the investigator shall provide to each party and the party's advisor, if any, all the evidence collected which is directly related to the allegations raised in the formal complaint. The parties shall have 10 days to submit a written response for the investigator's consideration before the investigator finalizes the investigative report.
3. Following the parties' opportunity to respond to the written evidence, the investigator shall finalize the written investigative report, including a recommendation on the question of responsibility and any recommended discipline sanction.
4. The investigator shall provide a copy of the report to each party and the party's advisor, if any, for their review and written response. The investigator shall also notify the parties of the opportunity to submit written questions to the other party and witnesses as provided in subsection G.2 below. The parties shall have 10 days to provide a written response to the investigative report, along with the party's initial set of written questions.
5. The investigator shall provide to the decision-maker a copy of the investigative report, the relevant evidence, and the parties' written responses to the report and initial sets of written questions.

The investigator shall also provide a description of the procedural steps taken, starting with the receipt of the formal complaint and continuing through the preparation of the investigative report, and including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence.

G. ADJUDICATION OF FORMAL COMPLAINTS

The superintendent or designee shall serve as the decision-maker. In his or her role as decision-maker, the superintendent or designee shall provide for the exchange of questions between the parties and a decision on responsibility in a manner consistent with law and as provided below.

1. Step 1 – Student’s Opportunity to Request a Hearing

In cases where the respondent is a student, after the investigative report has been sent to the parties, both parties shall have five calendar days to request a hearing. Requests for a hearing must be sent via e-mail to the Title IX Coordinator. If either party requests a hearing, the long-term suspension hearing procedures shall be followed, except that (1) both parties shall have the right to participate in the hearing to the extent required by Title IX; (2) the evidence will be made available at the hearing to give each party equal opportunity to refer to such evidence during the hearing; and (3) prior to the hearing, both parties shall have a limited opportunity to submit and respond to written questions and follow-up questions as provided below.

2. Step 2: Questions and Answers

After the parties are sent the investigative report, the parties shall have an opportunity to submit written, relevant questions that the party wants asked of any other party or witness. This opportunity will be provided regardless of whether a hearing is requested, and should be undertaken before a hearing if one is requested.

Initial questions must be submitted along with any response to the investigative report within ten (10) calendar days of receiving the investigative report via e-mail to the Title IX Coordinator. The Superintendent or designee will evaluate the questions for relevance and submit questions that are relevant to each party. Responses must be provided within three calendar days from receipt of the questions. Upon receipt of the answers to relevant questions, each party will have three calendar days to submit follow-up questions via e-mail to the Title IX Coordinator. The Superintendent or designee will evaluate the follow-up questions for relevance and submit the relevant questions. Each party will have three calendar days to respond to the follow-up questions via e-mail to the Title IX Coordinator.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior will be considered irrelevant, unless such questions and evidence 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 sexual behavior with respect to the respondent and is offered to prove consent. The superintendent or designee must explain to the party proposing the questions any decision to exclude questions as irrelevant.

3. Step 3 – Decision on the Question Regarding Responsibility

Following the exchange of questions and/or hearing as described above, the superintendent or designee shall decide the question regarding responsibility, any disciplinary action, and any other measures the superintendent or designee deems appropriate. The superintendent or designee shall consider all the relevant evidence objectively, including evidence in the investigative report, any testimony of witnesses at the hearing, if one was held, and any additional information provided by the parties through the exchange of questions and responses as provided above.

Based on an objective evaluation of the evidence, the superintendent or designee shall determine whether the preponderance of the evidence supports a finding that the respondent is responsible for sexual harassment in violation of board policy, and if so, what disciplinary sanction will be imposed.

4. Step 4 – Written Determination Regarding Responsibility

The superintendent or designee shall issue a written determination regarding responsibility simultaneously to both parties.

H. APPEAL OF FORMAL COMPLAINTS

The parties shall have the right to appeal to the board of education the determination regarding responsibility, the outcome of any disciplinary proceeding, and any dismissal of a formal complaint or any allegations therein. If both parties appeal, the appeals will be heard at the same time.

Either party may appeal by submitting a request in writing via e-mail to the Title IX Coordinator within five calendar days of receiving the determination regarding responsibility or dismissal, unless the party is entitled to a longer appeal period under state law or board policy. Any longer appeal period applicable to one party shall apply equally to the other party.

In all appeals, the other party will be notified in writing when an appeal is filed and be provided a copy of the appeal.

1. Appeal Procedures

- a. The board will hear the appeal. Unless otherwise required by law, the board may designate a panel of two or more board members to hear and act on behalf of the board.
- b. Appeal procedures will be implemented equally for both parties. In cases of a student-respondent, the appeal will follow the procedures for student discipline matters. In cases of an employee-respondent, the appeal will follow the procedures for employee hearings, as applicable.

2. Decision on Appeal

- a. The board will provide a written decision describing the results of the appeal and rationale for the result within thirty days after receiving the appeal unless the decision is delayed for good cause. The written decision will be provided simultaneously to both parties. The Board may make any appropriate determination and take any action it deems appropriate based on the evidence before it.

3. When the Decision Becomes Final

If an appeal is timely filed, the determination regarding responsibility becomes final at the conclusion of the appeal process. However, if the decision on appeal is to remand the matter back to the Superintendent or designee, the determination regarding responsibility does not become final until that process, including any appeal of the proceedings on remand, is concluded. If an appeal is not filed, the determination regarding responsibility becomes final after the three-day appeal period.

The superintendent or designee shall ensure that a copy of the final decision is provided to the Title IX coordinator and shall confer with the Title IX coordinator regarding any remedies to be provided to either party.