

**NPS TITLE IX ADMINISTRATIVE GUIDELINES**

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## **TITLE IX OVERVIEW**

### **A. What is Title IX?**

1. 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.”
2. Used to prevent discrimination in educational institutions that receive federal funds.
3. Governs the way in which institutions must handle accusations of sexual harassment to ensure that investigations are transparent and fair.

### **B. What is “sexual harassment” under Title IX?**

1. Quid pro quo harassment: A school employee conditioning an educational benefit or service upon a person’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’s education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking (as defined by applicable federal law).

### **C. What are the School Division’s obligations to respond to sexual harassment?**

1. The School Division ***must*** respond when: (1) it has actual knowledge of sexual harassment; (2) that occurred within the School Division’s education program or activity; (3) against a person in the United States.
  - a. Actual Knowledge: includes notice to ***any*** elementary or secondary school employee.
  - b. Education program or activity: includes situations over which the School Division exercised substantial control.
2. The School Division violates Title IX when its response to sexual harassment is deliberately indifferent – that is, clearly unreasonable in light of the known circumstances.
3. If the alleged conduct does not fall under Title IX, the School Division may address the allegations under the Student Code of Conduct or applicable School Board Policies and Regulations and provide supportive measures.
4. Response to actual knowledge of sexual harassment without a Formal Complaint:
  - a. Title IX Coordinator must promptly contact the Complainant to discuss the availability of supportive measures and inform Complainant of process for filing a Formal Complaint.
  - b. 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.

- c. 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.
5. Response to Formal Complaint: The School Division must investigate and resolve every Formal Complaint through the School Division's grievance process that incorporates principles of due process, treats all parties fairly, reaches reliable responsibility determinations, and provides a right to appeal.
6. Supportive Measures: The School Division must offer supportive measures to every Complainant, regardless of whether a Formal Complaint was filed. Supportive Measures are individualized services that are nonpunitive, nondisciplinary, and do not unreasonably burden the other party. They are designed to restore or preserve a person's equal access to education.
7. 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.
8. Informal Resolution: The parties may participate in an informal resolution process, such as mediation if both parties willingly consent. An informal resolution process is not an option when the complaint is filed by a student against an employee.
9. Mandatory and Discretionary Dismissal:
  - a. Mandatory Dismissal. The Title IX Coordinator must dismiss a Formal Complaint prior to commencing an investigation if the conduct alleged (1) would not constitute sexual harassment, even if proved, or (2) did not occur against a person in the United States.
  - b. Discretionary Dismissal. The Title IX Coordinator may dismiss a Formal Complaint at any time if (1) the Complainant withdraws the complaint, (2) the Respondent is no longer enrolled or employed by the School Division, or (3) specific circumstances prevent the School Division from gathering evidence sufficient to reach a determination.

#### **D. Title IX Staff**

1. Title IX Coordinators
  - a. Coordinates compliance with Title IX.
  - b. Receives complaints and coordinates response.
  - c. Initial point of contact with Complainants (and provides initial written notice to all parties if Formal Complaint filed).
  - d. Responsible for making determination regarding mandatory and discretionary dismissal.
  - e. Responsible for implementation of any remedies or consequences resulting from a grievance process.

- f. The Title IX Coordinator must respond promptly in a manner that is not deliberately indifferent when a school has actual knowledge of sexual harassment in an educational program or activity.
2. Investigators
    - a. Conduct factual investigations of Formal Complaints.
    - b. Allow both parties an equal opportunity to submit and review evidence.
    - c. Produce an investigative report summarizing the evidence.
  3. Decision-Makers
    - a. Review evidence and issue written findings and determination of responsibility.
    - b. Facilitate and allow the parties to submit written questions for the other parties and witnesses to answer.
  4. Decision-Makers on Appeal
    - a. Review appeals of a determination of responsibility or dismissal of a Formal Complaint.
    - b. Review the parties' written statements in support of, or challenging the outcome.
    - c. Issue a written decision describing the result of the appeal and the rationale for the result.
  5. Note regarding Conflict of Interest/Bias
    - a. The Title IX Coordinator, Investigator, Decision-Maker, and Decision-Maker on Appeal must be different individuals for each complaint.
    - b. Any individual designated as a Title IX Coordinator, Investigator, or Decision-Maker must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual complainant or respondent.

## **RESPONSE TO SEXUAL HARASSMENT WITHOUT FORMAL COMPLAINT**

### **Summary:**

- The School Division must respond when it has actual knowledge of sexual harassment that occurred within the School Division's education program or activity.
- **All** School Division employees are responsible for reporting suspected sexual harassment to the Title IX Coordinator *in writing*.
- Regardless of whether a Formal Complaint is filed, the Title IX Coordinator must confer with the Complainant regarding the availability of supportive measures when the School Division has actual knowledge of sexual harassment.

### **A. Actual knowledge of sexual harassment**

1. The School Division *must* respond when: 1) it has actual knowledge of sexual harassment; 2) that occurred within the School Division's education program or activity; and 3) against a person in the United States.
2. Actual Knowledge: Includes notice to any elementary or secondary school employee. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient. Nor is this standard met when the only employee with actual knowledge is the respondent.
3. Education program or activity: Includes locations, events, or circumstances over which the School Division exercises substantial control over both the respondent and the context in which the sexual harassment occurs. It 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.
4. The School Division violates Title IX when its response to sexual harassment is deliberately indifferent – that is, clearly unreasonable in light of the known circumstances.
5. If the alleged conduct does not fall under Title IX, the School Division may address the allegations under the Code of Student Conduct or applicable School Board Policies and Regulations and provide supportive measures.

### **B. Reports of sexual harassment**

1. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.
2. Such report may be made at any time (including non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX

Coordinator. Any principal, other administrator, teacher, or other employee who receives a complaint of such conduct by or against an individual, or is otherwise aware of suspected sexual harassment, is required to report immediately such complaint to the Title IX Coordinator in writing.

### **C. Procedure for Response**

The following procedures will be utilized, regardless of whether a Formal Complaint has been filed, when the School Division has actual knowledge of sexual harassment in an education program or activity of the School Division:

1. The Title IX Coordinator will 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.
2. If the School Division intends to impose disciplinary sanctions against a Respondent for sexual harassment as defined herein, the Title IX Coordinator will initiate the School Division's grievance process by signing a Formal Complaint.
3. If the alleged incident involves actions against a student by an employee, the Title IX Coordinator shall immediately forward the complaint to the Department of Human Resources for further investigation. If appropriate, the complaint shall be reported to Child Protective Services and/or Law Enforcement.

## **SUMMARY OF GRIEVANCE PROCESS FOR FORMAL COMPLAINTS**

The School Division is required under the new Title IX Regulations to investigate and adjudicate Formal Complaints of sexual harassment as defined by Title IX and its implementing regulations using a grievance process that incorporates principles of due process, treats all parties fairly, and reaches reliable responsibility determinations.

### **A. Overview**

1. When is the grievance process required?
  - a. When a Formal Complaint has been filed (either by a Complainant or the Title IX Coordinator); or
  - b. The School Division intends to discipline a Respondent for behavior that constitutes “sexual harassment” as defined by Title IX.
2. What is the scope of the Grievance Process?
  - a. The grievance process shall apply only to “sexual harassment” in a School Division “education program or activity” against a person in the United States, as per Title IX and its implementing regulations.
  - b. Sexual Harassment:
    - i. “Sexual harassment” as defined by Title IX and its implementing regulations means conduct on the basis of sex that satisfies one or more of the following:
      - (a) 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;
      - (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 School Division’s education program or activity; or
      - (c) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).<sup>1</sup>
    - ii. If the sexual misconduct that is alleged does not meet this definition of “sexual harassment,” then it may be addressed in accordance with the School Division’s Code of Student Conduct or applicable School Board Policies and Regulations.
  - c. Education Program or Activity:
    - i. 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 or the incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a post-secondary institution. “Program or activity” encompasses all of the School Division’s operations including, but not limited to: computer and internet networks; digital platforms and computer

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<sup>1</sup> For a more detailed definitions of these terms, please see the Glossary at the end of this document.

hardware or software owned or operated by, or used in the operations of, the School Division.

- ii. If the sexual misconduct that is alleged did not occur in a School Division “education program or activity,” then it may be addressed in accordance with the School Division’s Code of Student Conduct or applicable School Board Policies and Regulations.
3. Formal Complaints:
- a. What is a Formal Complaint?
    - i. A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the School Division investigate the allegation of sexual harassment.
  - b. Who may file a Formal Complaint?
    - i. The Title IX Coordinator, the Complainant, or the minor aged Complainant’s parent or legal guardian.
    - ii. 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.
  - c. How is a Formal Complaint filed?
    - i. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail.
    - ii. It must be a document or electronic submission that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant (or person authorized to act on the Complainant’s behalf) is the person filing the complaint.

**B. Summary of the Grievance Process:**

- 1. Preliminary Steps: Upon receipt of a Formal Complaint, the Title IX Coordinator must:
  - a. Promptly contact the Complainant regarding the availability of supportive measures;
  - b. Within two (2) business days, provide written notice to the parties of the complaint and grievance process, and appoint an Investigator;
  - c. Within three (3) business days of receipt of the complaint, make an initial determination regarding mandatory dismissal; and
  - d. Consider the appropriateness of emergency removal and consolidation of multiple complaints (if applicable)
- 2. Investigation
  - a. The Investigator will conduct a factual investigation of the allegations and allow both parties an equal opportunity to submit and review evidence.
  - b. The parties must be provided at least ten (10) calendar days to review and respond to the evidence before completion of the Investigative Report.



- c. Within twenty (20) calendar days of appointment of the Investigator, the Investigator will produce an Investigative Report fairly summarizing the evidence.

3. Determination of Responsibility

- a. Upon completion of the Investigative Report, the Title IX Coordinator will promptly designate a Decision-Maker to make an ultimate determination of responsibility.
- b. The Decision-Maker will facilitate and allow the parties to submit written questions for the other parties and witnesses to answer.
- c. The parties must have at least ten (10) calendar days to review the Investigative Report and submit a written response, if any, for the Decision-Maker to consider before completion of the determination of responsibility.
- d. Within twenty (20) calendar days of appointment of the Decision-Maker, the Decision-Maker must issue a written determination of responsibility based on a preponderance of the evidence.

4. Appeal

- a. Both parties have the right to appeal the determination of responsibility based on the following bases:
  - i. Procedural irregularity that affected the outcome of the matter;
  - ii. 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; or
  - i. 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.
- b. Written appeal must be filed with the Title IX Coordinator with three (3) business days of the determination of responsibility.
- c. The parties may submit a written statement in support of, or challenging, the outcome within five (5) calendar days of appointment of the Decision-Maker on appeal.
- d. A written decision on the appeal will be issued within ten (10) calendar days of filing the appeal.

## **GRIEVANCE PROCESS FOR FORMAL COMPLAINTS**

The following procedures will apply whenever a Formal Complaint has been filed (either by a Complainant or the Title IX Coordinator) or the School Division intends to discipline a Respondent for behavior that constitutes “sexual harassment” as defined by Title IX and its implementing regulations.

### **A. Preliminary Steps**

*Supportive Measures, Written Notice, Mandatory Dismissal, Emergency Removal, and Consolidation*

#### **Summary**

Upon receipt of a Formal Complaint, the Title IX Coordinator will:

- Promptly contact the Complainant regarding the availability of supportive measures;
- Within two (2) business days of receipt of the complaint, provide written notice to the parties of the complaint and grievance process, and appoint an Investigator;
- Within three (3) business days of receipt of the complaint, make an initial determination regarding mandatory dismissal
- Consider the appropriateness of emergency removal and consolidation of multiple complaints (if applicable)

1. Supportive Measures. Regardless of whether a Formal Complaint has been filed, the Title IX Coordinator will 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.
2. Appointment of Investigator. The Investigator will be appointed by the Title IX Coordinator at the time of the written notice to the parties as described below. Any individual designated as an Investigator must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
3. Written Notice. Within two (2) business days of receipt of a Formal Complaint, the Title IX Coordinator will provide the following written notice to the parties who are known:
  - a. The School Division’s grievance process, including any informal resolution process.
  - b. The allegations potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.
  - c. The Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

- d. The parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
  - e. The parties may inspect and review evidence as described below.
  - f. Any provision of the School Division's Code of Student Conduct or School Board Policies and Regulations that prohibit knowingly making false statements or knowingly submitting false information during the grievance process.
  - g. Name of Investigator appointed to investigate the complaint.
4. Mandatory Dismissal. Within three (3) business days of receipt of the complaint, and before assigning an Investigator, the Title IX Coordinator will conduct an initial investigation and review of the allegations in the Formal Complaint.
- a. The Title IX Coordinator must dismiss a Formal Complaint prior to commencing an investigation if the conduct alleged:
    - i. would not constitute sexual harassment as defined by Title IX, even if proved; or
    - ii. did not occur against a person in the United States.
  - b. Upon such dismissal, the Title IX Coordinator will promptly send written notice of the dismissal and the reason(s) for dismissal simultaneously to the parties.
5. Emergency Removal. The Title IX Coordinator must make an initial determination as to whether the Respondent should be removed from the School Division's education program or activity on an emergency basis. Such removal is appropriate where the School Division 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 removal.
6. Consolidation of Formal Complaints. The Title IX Coordinator 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.

**B. Investigation****Summary**

- If the complaint is not subject to mandatory dismissal, the Investigator will promptly begin the investigation.
- The Investigator will conduct a factual investigation of the allegations and allow both parties an equal opportunity to submit and review evidence. The parties must have at least ten (10) calendar days prior to completion of the Investigative Report to review and respond to the evidence.
- Within twenty (20) calendar days of the appointment of the Investigator, the Investigator will produce an Investigative Report fairly summarizing the evidence.
- The parties will have at least ten (10) calendar days to submit a written response, if any, to the Investigative Report.

1. Commencement of investigation. The Investigator will be appointed by the Title IX Coordinator at the time of the written notice to the parties as detailed above. If the complaint is not subject to mandatory dismissal, the Investigator will promptly begin the investigation.
2. Investigator responsibilities and conduct of the investigation:
  - a. Obtain written or verbal statements from the Complainant, Respondent, and those witnesses with relevant information about the alleged conduct.
  - b. Provide written notice of the date, time, location, participants, and purpose of all interviews or other meetings at which their participation is invited or expected, with sufficient time for the party to prepare to participate.
  - c. Provide the parties the same opportunities to have others present during any interview or other meeting, including the opportunity to be accompanied by the advisor of their choice, who may be, but is not required to be, and attorney.
  - d. Provide the parties an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, and not restrict the ability of either party to discuss the allegations under investigation.
  - e. Provide the parties equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation
  - f. Prior to completion of the Investigative Report, send 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 will have ten (10) calendar days to submit a written response, which the Investigator will consider prior to completion of the investigative report.
  - g. Within twenty (20) calendar days of appointment of the Investigator, produce an Investigative Report that fairly summarizes the relevant evidence. The Investigative

Report will be sent to each party and the party's advisor, if any, in an electronic format or hard copy, for their review and written response.

- h. The parties must have at least ten (10) calendar days to submit a written response, if any, to the Investigative Report.
3. Limitations on investigation.
- a. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the School Division and not on the parties.
  - b. The Investigator 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 recipient obtains that party's voluntary, written consent to do so for a grievance process under these guidelines (if a party has not reached 18 years of age or attending a post-secondary institution, then the School Division must obtain the voluntary, written consent of a parent or legal guardian).
  - c. The Investigator may 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.

### **C. Determination of Responsibility**

#### **Summary**

- Once the Investigative Report has been sent to the parties, the Title IX Coordinator will promptly designate a Decision-Maker to make an ultimate determination of responsibility.
- The Decision-Maker will facilitate and allow the parties to submit written questions for the other parties and witnesses to answer.
- The parties' written response to the Investigative Report and initial set of written questions, if any, must be submitted to the Decision-Maker within ten (10) calendar days of receipt of the Investigative Report.
- Within twenty (20) calendar days of appointment of the Decision-Maker, the Decision-Maker must issue a written determination of responsibility based on a preponderance of the evidence.

#### 1. Designation of a Decision-Maker.

- a. Once the Investigative Report has been sent to the parties, the Title IX Coordinator will designate a Decision-Maker who will make an ultimate determination of responsibility.
- b. Cannot be the same person(s) as the Title IX Coordinator or Investigator.
- c. Must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- d. The parties may submit a written response to the Investigative Report directly to the Decision-Maker within ten (10) calendar days of receipt of the Investigative Report.

#### 2. Responsibilities of Decision-Maker.

- a. Conduct an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence, and issue a written determination of responsibility.
- b. Facilitate and allow the parties to submit written questions for the other parties and witnesses to answer.

#### 3. Facilitation of questions.

- a. Before reaching a determination regarding responsibility, the Decision-Maker 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.
- b. The Decision-Maker must explain to the party proposing the questions any decision to exclude a question as not relevant.
- c. The parties' initial set of relevant questions, if any, must be submitted to the Decision-Maker within ten (10) calendar days of receiving the Investigative Report.

#### 4. Review of the evidence.

- a. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
  - b. In reaching a determination of responsibility, the Decision-Maker will apply a preponderance of the evidence standard, meaning it is more likely than not that sexual harassment as defined by Title IX occurred.
  - c. In determining whether the alleged conduct constitutes sexual harassment, it is necessary to evaluate the totality of the circumstances surrounding the conduct. The following factors should be considered:
    - i. the ages, intellectual or disability status of the parties involved;
    - ii. the nature, severity and scope of the conduct;
    - iii. whether the conduct is sexual in nature;
    - iv. whether the conduct is offensive;
    - v. whether the conduct is unwelcome or inappropriate to the educational environment;
    - vi. the frequency and duration of the behavior;
    - vii. the number of persons involved in the behavior;
    - viii. the context in which the conduct occurred;
    - ix. where the conduct occurred;
    - x. whether there have been other incidents in the educational environment involving the same individuals;
    - xi. whether the conduct adversely affected the individual's educational opportunities;
    - xii. the remedy sought by the complainant or victim and the alleged perpetrator's response to the remedy sought; and
    - xiii. any unusual or extenuating circumstances
5. Written determination of responsibility.
- a. Within twenty (20) calendar days of appointment of the Decision-Maker, the Decision-Maker must issue a written determination of responsibility, to include:
    - i. Identification of the allegations potentially constituting sexual harassment as defined herein;
    - ii. A description of the procedural steps taken from the receipt of the Formal Complaint through determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;
    - iii. Findings of fact supporting the determination;
    - iv. Conclusions regarding the application of the School Division's Code of Student Conduct to the facts;

- v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the School Division imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the School Division's education program or activity will be provided by the School Division to the Complainant; and
  - vi. The School Division's procedures and permissible bases for the Complainant and Respondent to appeal.
- b. The written determination will be provided to the parties simultaneously, and becomes final either on the date the School Division provides the parties with written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, on the date on which an appeal would no longer be considered timely.



**D. Appeals****Summary**

- Both parties have the right to appeal the determination of responsibility based on specific predefined bases.
- Written appeal must be filed with the Title IX Coordinator with three (3) business days of the determination of responsibility.
- A written decision on the appeal will be issued within ten (10) calendar days of appointment of the Decision-Maker on appeal.

1. Right/Bases to appeal. Both parties have the right to appeal a determination regarding responsibility and the School Division'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; or
  - c. The Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interests or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
2. Procedures for appeal.
  - a. A written appeal must be filed with the Title IX Coordinator within three (3) business days of receipt of the written determination of responsibility or dismissal of the Formal Complaint.
  - b. The Title IX Coordinator will promptly notify the other party in writing of the appeal and appoint a Decision-Maker for the appeal who is not the same person as the Decision-Maker that reached the determination regarding responsibility or dismissal, the Investigator(s), or the Title IX Coordinator. Any individual designated as a Decision-Maker for an appeal must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
  - c. Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. Any such statement must be submitted within five (5) calendar days of appointment of the Decision-Maker on appeal.
  - d. Within ten (10) calendar days of appointment of the Decision-Maker on appeal, the Decision-Maker will issue a written decision, provided simultaneously to both parties, describing the result of the appeal and the rationale for the result.

**E. Delays/Extensions and Discretionary Dismissal**

1. Delays/Extensions. Any time period required by this grievance process may be temporarily delayed or extended for good cause with written notice to both parties 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. Such extension will be for a reasonable time period, but not longer than thirty (30) business days from the date that the action was originally due.

2. Discretionary Dismissal.

- a. The Title IX Coordinator may dismiss the Formal Complaint or any allegations therein, if at any time during the investigation:
  - i. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
  - ii. The Respondent is no longer enrolled or employed by the School Division; or
  - iii. Specific circumstances prevent the School Division from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
- b. Upon such dismissal, the Title IX Coordinator will promptly send written notice of the dismissal and the reason(s) for dismissal simultaneously to the parties

## **INFORMAL RESOLUTION**

### **A. Overview**

1. The Complainant or Respondent may request in writing at any time that informal methods, such as mediation, be utilized to address the allegations in a Formal Complaint.
2. The Title IX Coordinator may place the grievance process on hold while the informal resolution process is ongoing.
3. Either party may terminate the informal resolution process at any time.

### **B. Procedure**

1. At any time prior to reaching a determination regarding responsibility on the allegations in a Formal Complaint, and upon written request to the Title IX Coordinator by either party, the School Division may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.
2. The Title IX Coordinator must provide the parties written notice disclosing the allegation, 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.
3. The Title IX Coordinator must obtain the parties' voluntary, written consent to the informal resolution process
4. 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.

### **C. Limitations**

1. A Complainant or Respondent cannot be compelled to participate in any informal resolution process.
2. The School Division 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 these guidelines.
3. The School Division cannot offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

**GLOSSARY/DEFINITIONS**

- A. ***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.
- B. ***Complainant*** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- C. ***Conflict of interests 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.
- D. ***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.
- E. ***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.
- F. ***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 or the incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially

recognized by a post-secondary institution. “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.

- G. ***Emergency 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.
- H. ***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 School Division investigate the allegation of sexual harassment.
1. 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.
  2. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail.

3. The phrase “document filed by a complainant” means a document or electronic submission that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the complaint.
- I. ***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;
  2. the School Division exercised substantial control over the respondent in the context of the alleged sexual harassment that occurred off-campus; or
  3. the incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a post-secondary institution.
- J. ***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.
- K. ***Respondent*** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- L. ***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
  3. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).
    - 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:
    - (a) the length of the relationship.
    - (b) The type of relationship.
    - (c) 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
- M. ***Standard of Evidence – preponderance of the evidence:*** A preponderance of the evidence standard of evidence is understood to mean that a fact is more likely than not to be true.
- N. ***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.
- 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.