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## **School Board**

### **Administrative Procedure – Formal Title IX Complaint Grievance Process**

This procedure implements the District's grievance process for a Title IX Complaint after a decision to pursue one has been made using administrative procedure 2:265-AP1, *Title IX Response*. See 34 C.F.R. Part 106. Use this procedure to comply with 34 C.F.R. §106.45, *Grievance procedures for complaints of sex discrimination*. Use exhibit 2:265-E, *Title IX Glossary of Terms*, and administrative procedure 2:265-AP3, *Title IX Coordinator*, in conjunction with this procedure. **Consult the Board Attorney as needed throughout the grievance process.**

This procedure contains a **Table of Contents** and lettered **Sections**.

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#### Sections

##### **A. Overview of Title IX Complaint Grievance Process**

The District's Title IX Complaint Grievance Process (Grievance Process) adheres to the following guidelines:

1. Treat Parties Equitably. The District shall treat Complainants and Respondents equitably. 34 C.F.R. §106.45(b)(1).
2. No Conflict of Interest or Bias. The District shall require that any person designated as a Title IX Coordinator, Investigator, or Decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent. 34 C.F.R. §106.45(b)(2).
3. Presumption of Non-Responsibility. The Respondent is presumed not responsible for the alleged Title IX Sex Discrimination until a determination is made at the conclusion of the Grievance Process. 34 C.F.R. §106.45(b)(3).
4. Grievance Process Required Before Imposing Sanctions. The District shall comply with this Grievance Process before imposing any disciplinary sanctions against a Respondent for Title IX Sex Discrimination. 34 C.F.R. §106.45(h)(3), (h)(4).
5. Supportive Measures. The District shall offer and coordinate supportive measures, as appropriate, for a Complainant upon being notified of conduct that reasonably may constitute Title IX Sex Discrimination and for a Respondent if the District has initiated the Grievance Process or has offered the Respondent an informal resolution process. 34 C.F.R. §§106.44(f)(1)(ii), 106.44(g), 106.45(l)(1). See administrative procedure 2:265-AP1, *Title IX Response*, for more on supportive measures. See exhibit 2:265-E, *Title IX Glossary of Terms*, for the definition of *supportive measures*.
6. Timeframe. This Grievance Process shall be concluded within 90 school business days after receipt of a Complaint. As used in this Grievance Process, *school business days* means days



on which the District's main office is open. On a case-by-case basis, this Grievance Process may be temporarily delayed or extended for good cause only if the Complainant and the Respondent, as appropriate, are provided written notice of the delay/extension and the reasons for it. Good cause may include, but is not limited to: the unavailability of a party or a witness; concurrent law enforcement or other agency activity; or the need for language assistance or accommodation of disabilities. 34 C.F.R. §106.45(b)(4).

7. Privacy Protection. The District shall take reasonable steps to protect the privacy of a Complainant and a Respondent and witnesses during the Grievance Process. These steps shall not restrict the ability of a Complainant or a Respondent to obtain and present evidence, including by speaking to witnesses; consulting with their family members, confidential resources, or advisors; or otherwise preparing for or participating in the Grievance Process. 34 C.F.R. §106.45(b)(5).
8. Evidence Considered. The District shall objectively evaluate all relevant evidence – including both inculpatory and exculpatory evidence – that is not otherwise impermissible. Credibility determinations are not based on a person's status as a Complainant, Respondent, or witness. The District shall exclude (not disclose or otherwise use) impermissible evidence and questions seeking that evidence, regardless of whether the evidence is relevant. The District may access or consider impermissible evidence solely to determine whether an exception that would allow its consideration exists. 34 C.F.R. §106.45(b)(6), (7). See exhibit 2:265-E, *Title IX Glossary of Terms*, for the definition of *impermissible evidence*.
9. Standard of Proof. All determinations are based upon the *preponderance of the evidence* standard. 34 C.F.R. §106.45(h)(1). See exhibit 2:265-E, *Title IX Glossary of Terms*, for the definition of *preponderance of the evidence*.
10. Right to Appeal. Each party may appeal any determination or dismissal as described in **Section H. Appeals**, below. 34 C.F.R. §§106.45(d)(3), (i).
11. Remedies and Disciplinary Sanctions. Following a determination that Title IX Sex Discrimination occurred, the District must provide, as appropriate, remedies to a Complainant and other persons the District identifies as having had their equal access to the District's education program or activity limited or denied by Title IX Sex Discrimination. 34 C.F.R. §106.45(h)(3). Additionally, the District may implement, as appropriate, disciplinary sanctions on a Respondent, up to and including: discharge for an employee-Respondent; expulsion for a student-Respondent; and termination of any existing contracts and/or prohibition from District property and activities for a third-party Respondent. The District may not impose discipline on a Respondent for Title IX Sex Discrimination unless there is a determination at the conclusion of the Grievance Process that the Respondent engaged in prohibited Title IX Sex Discrimination. 34 C.F.R. §106.45(h)(3), (l)(2). See exhibit 2:265-E, *Title IX Glossary of Terms*, for the definitions of *remedies* and *disciplinary sanctions*.
12. Training Requirements. The District ensures certain training requirements are met at the time of hiring or change of position that alters an employee's Title IX duties and annually thereafter. 34 C.F.R. §106.8(d). See administrative procedures 2:265-AP1, *Title IX Response*, and 2:265-AP3, *Title IX Coordinator*, for details on training requirements.

## **B. Evaluation of Title IX Complaint**

When a Complaint is filed, the Title IX Coordinator shall, within 10 school business days, evaluate whether to investigate or dismiss the Complaint. 34 C.F.R. §106.45(b)(4). In evaluating the Complaint, the Title IX Coordinator shall analyze the allegations to determine whether the conduct as alleged could constitute Title IX Sex Discrimination and whether any of the bases for dismissal apply as set forth in **Section E. Dismissal**, below.

Where the Title IX Coordinator reasonably determines that the conduct as alleged could constitute Title IX Sex Discrimination, this Grievance Process shall be initiated. Where the Title



IX Coordinator reasonably determines that the conduct as alleged does not constitute Title IX Sex Discrimination, the Title IX Coordinator shall dismiss the Complaint, or allegation(s) therein, as set forth in **Section E. Dismissal**, below.

### **C. Notice of Allegations**

Upon initiating this Grievance Process, the Title IX Coordinator:

1. Provides written notice to all known parties with the following information (34 C.F.R. §106.45(c)(1)):
  - a. This procedure 2:265-AP2, *Formal Title IX Complaint Grievance Process*, including any available informal resolution process.
  - b. The allegations of Title IX Sex Discrimination. This includes sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute Title IX Sex Discrimination, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to the District.
  - c. Retaliation is prohibited. See exhibit 2:265-E, *Title IX Glossary of Terms*, for the definition of *retaliation*.
  - d. The parties have an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of the evidence. If the District opts to provide a description of the evidence, the parties have an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.
  - e. The District's behavior policies prohibit knowingly making false statements or knowingly submitting false information during the Grievance Process.
2. Provides a second written notice to all known parties if, during the investigation, the District decides to investigate allegations not included in the first written notice. 34 C.F.R. §106.45(c)(2).
3. Decides whether to personally conduct the investigation or appoint a qualified investigator. If the Title IX Coordinator appoints a qualified investigator, provides written notice of the appointment to the Investigator.

#### When the Complainant's Identity Is Unknown

If the Complainant's identity is unknown, e.g., where an anonymous person or third-party reports conduct that reasonably may constitute Title IX Sex Discrimination, the Grievance Process may proceed if the Title IX Coordinator determines it is necessary to initiate a Complaint, even though the written notice provided in **Section C.1**, above, will not include the Complainant's identity. If the Complainant's identity is later discovered, the Title IX Coordinator provides another written notice to the parties.

#### When the Respondent's Identity is Unknown

If the Respondent's identity is unknown, e.g., where a Complainant does not know the Respondent's identity, the Grievance Process shall proceed because an investigation might reveal the Respondent's identity, even though the written notice provided in **Section C.1**, above, will not include the Respondent's identity. If the Respondent's identity is later discovered, the Title IX Coordinator provides another written notice to the parties.

### **D. Consolidation of Title IX Complaints**

When the allegations of Title IX Sex Discrimination arise out of the same facts or circumstances, the Title IX Coordinator may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party. 34 C.F.R. §106.45(e).

### **E. Dismissal of Title IX Complaint**



At any time, the Title IX Coordinator may dismiss a Complaint made under this Grievance Process, or any allegations contained in it, for any of the following reasons (34 C.F.R. §106.45(d)(1)):

1. The District is unable to identify the Respondent after taking reasonable steps to do so.
2. The Respondent is no longer enrolled in or employed by the District.
3. The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a complaint, and the Title IX Coordinator determines any remaining allegations in the Complaint would not constitute Title IX Sex Discrimination even if proven.
4. The District determines the alleged conduct, even if proven, would not constitute Title IX Sex Discrimination. Prior to dismissing the Complaint under this paragraph, the District must make reasonable efforts to clarify the allegations with the Complainant.

Upon dismissal, the Title IX Coordinator must promptly notify the Complainant in writing of the basis for the dismissal and the right to appeal the dismissal on the bases as described in **Section H. Appeals**, below. If the dismissal occurs after the Respondent has been notified of the allegations, the Title IX Coordinator shall simultaneously notify the Respondent in writing of the dismissal, its basis, and the right to appeal the dismissal on the bases as described in **Section H. Appeals**, below. 34 C.F.R. §106.45(d)(2), (3).

Upon dismissal, the Title IX Coordinator also must (34 C.F.R. §106.45(d)(4)):

1. Offer supportive measures to the Complainant, as appropriate;
2. Offer supportive measures to the Respondent, as appropriate, if the dismissal was pursuant to **Section E.3** or **Section E.4**, above, and the Respondent has been notified of the allegations;
3. Take other appropriate prompt and effective steps to ensure that Title IX Sex Discrimination does not continue or recur within the District's education program or activity.

See administrative procedure 2:265-AP1, *Title IX Response*, for more on supportive measures. See exhibit 2:265-E, *Title IX Glossary of Terms*, for the definition of *supportive measures*.

#### **F. Informal Resolution of Title IX Complaint**

At any time prior to determining if sex discrimination occurred under this Grievance Process, the District may offer to the Complainant and Respondent an informal resolution process. The District is prohibited from offering an informal resolution process when the Complaint includes allegations that an employee engaged in sex-based harassment of a student, or when such a process would conflict with federal, State, or local law.

The District has discretion to determine whether it is appropriate to offer an informal resolution process when it receives information about conduct that reasonably may constitute Title IX Sex Discrimination or when a Complaint is made, and may decline to offer informal resolution despite one or more of the parties' wishes. Such circumstances may include, but are not limited to, when the District determines the alleged conduct would present a future risk of harm to others. 34 C.F.R. §§106.44(k), 106.45(k)(1).

To offer an informal resolution process, the District must:

1. Provide the parties written notice explaining (34 C.F.R. §106.44(k)(3)):
  - a. The allegations;
  - b. Informal resolution process requirements;
  - c. That at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the Grievance Process;



- d. That if the parties agree to a resolution at the conclusion of the informal resolution process, the parties' agreement precludes the parties from initiating or resuming the Grievance Process arising from the same allegations;
  - e. The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding; and
  - f. The information that will be maintained and whether and how the information could be disclosed for use in the Grievance Process if the Grievance Process is initiated or resumed.
2. Obtain the parties' voluntary, written consent to the informal resolution process. The District cannot require a waiver by the parties of the right to an investigation and determination of a complaint under the Grievance Process as a condition of enrollment or continuing enrollment in the District or employment or continuing employment in the District, or exercise of any other right. 34 C.F.R. §106.44(k)(2).
  3. Assign a facilitator for the informal resolution process who is not the Investigator or Decisionmaker in the Grievance Process. 34 C.F.R. §106.44(k)(4).
  4. Require the Title IX Coordinator, to the extent necessary, to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the District's education program or activity. 34 C.F.R. §106.44(k)(1).

#### Potential Terms for Informal Resolution Agreement

The following are potential terms that an informal resolution agreement may include, but are not limited to (34 C.F.R. §106.44(k)(5)):

1. Restrictions on contact; and
2. Restrictions on the Respondent's participation in one or more of the District's programs or activities or attendance at specific events, including restrictions the District could have imposed as remedies or disciplinary sanctions had the District determined at the conclusion of the Grievance Process that Title IX Sex Discrimination occurred.

### **G. Investigation and Determination of Title IX Complaint**

The Investigator/Decisionmaker follows these steps when investigating the allegations in a Complaint. The Investigator/Decisionmaker shall make all reasonable efforts to complete the investigation and issue a written determination regarding whether Title IX Sex Discrimination occurred under Title IX within 30 school business days. This timeframe can be extended for good cause as provided in **Section A.6**, above.

If the allegations are against the Superintendent or against a Board Member, an independent Investigator/Decisionmaker (e.g., an attorney or retired school administrator) shall be appointed.

Actor	Action
Investigator/ Decisionmaker	<p><b><u>Investigation</u></b></p> <p>During an investigation and throughout the Grievance Process, provides an adequate, reliable, and impartial investigation by (34 C.F.R. §106.45(f)):</p> <ol style="list-style-type: none"> <li>1. Ensuring the burden of gathering sufficient evidence to determine whether Title IX Sex Discrimination occurred is on the District and not the parties. 34 C.F.R. §106.45(f)(1).</li> <li>2. Providing an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that is</li> </ol>



Actor	Action
	<p>relevant and not otherwise impermissible. 34 C.F.R. §106.45(f)(2).</p> <ol style="list-style-type: none"> <li>3. Reviewing all evidence gathered through the investigation and determining what evidence is relevant and what evidence is impermissible regardless of relevance. 34 C.F.R. §106.45(f)(3).</li> <li>4. Providing the parties an equal opportunity to access the evidence that is relevant to the allegation(s) and not otherwise impermissible, or an accurate description of this evidence. If a description of the evidence is provided, the parties must be provided an equal opportunity to access the relevant and not otherwise impermissible evidence upon request. 34 C.F.R. §106.45(f)(4)(i).</li> <li>5. Providing the parties a reasonable opportunity to respond to the evidence or to the accurate description of the evidence. 34 C.F.R. §106.45(f)(4)(ii).</li> <li>6. Taking reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through this Grievance Process. 34 C.F.R. §106.45(f)(4)(iii).</li> </ol> <p><b><u>Determination and Written Notice of Determination</u></b></p> <p>Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, does the following (34 C.F.R. §106.45(h)(1), (2)):</p> <ol style="list-style-type: none"> <li>1. Bases all decisions on the <i>preponderance of evidence</i> standard.</li> <li>2. Notifies the parties in writing of the determination regarding whether Title IX Sex Discrimination occurred, including the rationale for such determination and permissible bases for the Complainant and the Respondent to appeal as described in <b>Section H. Appeals</b>, below.</li> </ol>
Title IX Coordinator or Designee	<p>If there is a determination that Title IX Sex Discrimination occurred (34 C.F.R. §106.45(h)(3)):</p> <ol style="list-style-type: none"> <li>1. Coordinates the provision and implementation of remedies for the Complainant and other persons identified as having had their equal access to the District's education program or activity limited or denied by Title IX Sex Discrimination.</li> <li>2. Coordinates the imposition of any disciplinary sanctions on a Respondent, including notification to the Complainant of any such disciplinary sanctions. The District may not impose discipline on a Respondent for Title IX Sex Discrimination unless there is a determination at the conclusion of the Grievance Process that the Respondent engaged in prohibited Title IX Sex Discrimination.</li> <li>3. Takes other appropriate prompt and effective steps to ensure that Title IX Sex Discrimination does not continue or recur within the District's education program or activity.</li> </ol>

## H. Appeals

The determination regarding whether Title IX Sex Discrimination occurred becomes final either on the date on which an appeal would no longer be considered timely if an appeal is not filed, or



the date that the Appeal Decisionmaker provides the parties with the written decision of the result of the appeal if an appeal is filed. 34 C.F.R. §106.45(b)(4).

Complainant or Respondent	<p>Within five (5) school business days after receiving either (1) notice of the determination of whether Title IX Sex Discrimination occurred, or (2) notice of dismissal of a Complaint, or allegations therein, makes a written request to the Title IX Coordinator appealing the determination/dismissal based on (34 C.F.R. §§106.45(d)(3), 106.46(i)(1)):</p> <ol style="list-style-type: none"> <li>7. Procedural irregularity that would change the outcome.</li> <li>8. New evidence now available that would change the outcome but that was not reasonably available at the time of the determination.</li> <li>9. The Title IX Coordinator or Investigator/Decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome.</li> </ol>
Title IX Coordinator or Designee	<p>Upon receiving an appeal from one party (34 C.F.R. §106.45(d)(3), (i)):</p> <ol style="list-style-type: none"> <li>1. Notifies the parties in writing that an appeal has been filed, including notice of the allegations if notice consistent with <b>Section C. Notice of Allegations</b>, above, was not previously provided to the Respondent.</li> <li>2. Provides both parties five (5) school business days to submit a written statement and/or new evidence in support of, or challenging, the outcome to the Title IX Coordinator.</li> <li>3. Promptly forwards all materials relative to the appeal to the Appeal Decisionmaker.</li> </ol> <p>Ensures that the Appeal Decisionmaker is not the same person as the Investigator/Decisionmaker or the Title IX Coordinator. 34 C.F.R. §106.45(d)(3)(iii).</p> <p><b>Note:</b> The Board may, but is not required to, hear and decide the appeal; it is a suggestion that aligns with the appeal provisions in policy 2:260, <i>Uniform Grievance Procedure</i>, and with Ill. State Board of Education sex equity regulations requiring districts to “provide for final appeal of grievance decisions made at the system level to the system’s governing board.” 23 Ill.Admin.Code §200.40(c)(1). If the Board acts as the Appeal Decisionmaker, the Board must receive the training in <b>Section A.12</b>, above. Some school attorneys recommend that the appeal not go to the Board, so that the Board’s objectivity is not called into question if it needs to conduct a hearing related to recommended disciplinary sanctions resulting from the Grievance Process. <b>Consult the board attorney regarding these options.</b></p>
Appeal Decisionmaker	<p>Within 30 school business days, affirms, reverses, or amends the written determination regarding whether Title IX Sex Discrimination occurred or the notice of dismissal.</p> <p>Within five (5) school business days after its decision, notifies the parties in writing of the result of the appeal and the rationale for the result. 34 C.F.R. §106.45(d)(3)(vi).</p>



## I. Recordkeeping

Actor	Action
Title IX Coordinator or Designee	See the Recordkeeping subhead in administrative procedure 2:265-AP1, <i>Title IX Response</i> .