

Grievance Process for Title IX Complaints

Title IX Coordinator:

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OVERVIEW

The Gateway Regional School District is committed to maintaining school environments free of sexual discrimination harassment. Sexual discrimination harassment in any form or for any reason is prohibited. This includes sexual discrimination harassment by administrators, personnel, students, vendors, and other individuals in school or at school related events. The School Committee, in accordance with Title IX of the Education Amendments of 1972, declares that the school district does not and will not discriminate on the basis of sex, sexual orientation, gender identity, sex stereotypes, sex characteristics, marital status, familial status, pregnancy or pregnancy-related conditions and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX, including in admission and employment.

The Gateway Regional School District has adopted these grievance procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

General Information:

- Practices within these grievance procedures will be applied equally to both complainants and respondents.
- The respondent is presumed innocent and can only be found responsible for the alleged conduct at the conclusion of this grievance process.
- The Gateway Regional School District requires that any 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. A decisionmaker may be the same person as the Title IX Coordinator or investigator.
- All parties are entitled to an advisor of their choice at their own expense to assist them in this process. The advisor may, but does not have to be, an attorney.
- Schools may, in their discretion, consolidate formal complaints where the allegations arise out of the same facts.
- The Gateway Regional School District allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that

- includes the reason for the delay as set forth below.
- The Gateway Regional School District will take reasonable steps to protect the privacy of the parties and witnesses and keep the identity of complainants, respondents, and witnesses confidential, except as permitted by the Family Educational Rights and Privacy Act (FERPA), as otherwise required by law, and/or as necessary during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses. The Gateway Regional School District will objectively evaluate all evidence that is relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.
 - In the course implementing supportive measures, informal resolution, and/or a grievance procedure, and throughout the same, if either a complainant or respondent is an elementary or secondary student with a disability, the Title IX Coordinator must consult with one or more members, as appropriate, of the student's Individualized Education Program (IEP) team, 34 CFR 300.321, if any, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision under 34 CFR 104.35(c), if any, to determine how to comply with the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

Important Terms

Complaint – An oral or written request to an employee of the School that objectively can be understood as a request for the School to investigate and make a determination about alleged discrimination under Title IX

Complainant –

- (1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
- (2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX and who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.

Relevant – Related to the allegations of sex discrimination under investigation as part of the grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

Remedies – Measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient's education program or activity limited or denied by sex discrimination. These measures are provided to

restore or preserve that person's access to the recipient's education program or activity after a recipient determines that sex discrimination occurred.

Respondent – An individual who is alleged to have violated the School's prohibition on sex discrimination.

Retaliation – Any intimidation, threats, coercion, or discrimination against any person for the purpose of interfering with any right or privilege, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, including in an informal resolution process. Nothing in this definition or this part precludes a School from requiring an employee or other person authorized to provide aid, benefit, or service under the School's education program or activity to participate as a witness in, or otherwise assist with, an investigation. Retaliation is strictly prohibited.

Title IX Coordinator – The person responsible for coordinating the School's compliance with its obligations under Title IX

Investigator – The person conducting the investigation into the allegations of sex discrimination and/or harassment.

*The Title IX Coordinator may also serve as the Investigator or the Decision Maker.

Decision Maker – The person who reviews all the information/evidence gathered by the investigator and decides whether or not the sex discrimination and/or harassment occurred. This person can also be the Title IX Coordinator or the Investigator.

Appeals Decision Maker – The person who makes the final determination in the event an appeal is filed. This person is not the Title IX Coordinator, the Investigator, or the original Decision Maker.

Sex-based discrimination is discrimination based on sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Sex-based harassment is harassment on the basis of sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Sex-based harassment includes:

- ▶ *Quid pro quo harassment.* An employee, agent, or other person authorized by the School to provide an aid, benefit, or service under the School's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
- ▶ *Hostile environment harassment.* Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (*i.e.*, creates a hostile environment).
- ▶ *Specific offenses.* An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation such as sexual assault, dating violence, domestic violence, stalking, etc.

While it is not possible to list all those additional circumstances that may constitute sex-based harassment, the following are some examples of conduct, which if unwelcome,

may constitute sex-based harassment, depending on the totality of the circumstances, including the severity of the conduct or its pervasiveness:

- Unwelcome sexual advances-whether they involve physical touching or not;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body, comment about an individual's sexual activity and/or sexual orientation and/or gender identity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Inquiries into one's sexual experiences; and,
- Discussion of one's sexual activities.

The definition of sex-based harassment is broad and in addition to the above examples, other conduct, whether it is intended or not, that is unwelcome and has the effect of creating an environment that is hostile, offensive, intimidating, to male, female, or gender non-conforming students or employees may also constitute sexual harassment.

Supportive Measures

Supportive measures are individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

When the school becomes aware of alleged sexual harassment, the Title IX Coordinator must inform the complainant to their right of supportive measures even if no formal complaint is filed. When a formal complaint is filed, the Title IX Coordinator must inform the respondent of their right to supportive measures. The school must consider the complainant and respondent wishes with respect to supportive measures. Supportive measures for those involved in the sexual harassment complaint process may include but are not limited to: counseling, extending deadlines, modifications of work and/or class schedules, school escort services, increased school security and/or monitoring, and mutual restrictions on contact between the individuals involved through a safety plan.

Supportive measures will be kept confidential to the extent the confidentiality will not interfere with the supportive measure offered.

If either party is a student with a disability, the Title IX Coordinator will consult with one or more members of the students' IEP or 504 Team, as appropriate, to assure the supportive measures being offered align with the students' accommodations.

The Process:

Filing a Complaint

Any person may file a report of 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), at any time either 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. There is no time limit or statute of limitations on a complainant's decision to file a formal complaint. However, if a person files a false complaint in bad faith, knowingly and intentionally, they may be subject to discipline.

If a complainant chooses not to file a Formal Complaint, the complainant's choice to not initiate an investigation will generally be respected, unless the Title IX Coordinator determines that signing a Formal Complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances. The Title IX Coordinator will take into account concerns articulated by the parties, the best interests of the community, fairness to all concerned, and the District's legal obligations under applicable state and federal laws.

Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party during a grievance process, and must comply with requirements for all Title IX personnel to be free from conflicts and bias.

At the time of filing a complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the complaint is filed.

Dismissals of Complaints:

The Title IX Coordinator may dismiss a sex-based harassment complaint under the following circumstances:

1. The recipient is unable to identify the respondent after taking reasonable steps to do so; or
2. The respondent is not participating in the recipient's education program or activity and is not employed by the recipient; or
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 recipient determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX or this part even if proven; or
4. The Title IX Coordinator determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Prior to dismissing the complaint under this paragraph, the Title IX Coordinator must make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, the Title IX Coordinator must promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the Title IX Coordinator must also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

The Parties must be notified of their rights to appeal the dismissal. If the dismissal is appealed, the Title IX Coordinator must:

- i. Notify the parties of any appeal, including notice of the allegations consistent with paragraph (c) of this section if notice was not previously provided to the respondent;
 - ii. Implement appeal procedures equally for the parties;
 - iii. Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
 - iv. Ensure that the decisionmaker for the appeal has been trained
 - v. Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
 - vi. Notify the parties of the result of the appeal and the rationale for the result.
- The Complainant is still entitled to supportive measures should a dismissal occur.

Initial Notice

Upon the filing of a formal complaint, both parties will be provided with written notice of the complaint. The notice will include:

1. The District's Title IX grievance procedures and any informal resolution process;
2. 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 sex discrimination, and the date(s) and location(s) of the alleged incident(s);
3. A statement prohibiting retaliation. key details of the alleged sexual harassment incident. Such details will include but not be limited to: who was involved, when and where the alleged incident occurred, and the alleged misconduct that constitutes sexual harassment. Any known possible violation of the code of conduct along with potential consequences must be included in the initial notice. The notice will include a statement that retaliation is prohibited, and a statement that both parties are given equal opportunity to present and access relevant evidence.
4. A statement prohibiting knowingly submitting false information;
5. A statement that the respondent is presumed not responsible for the alleged conduct;
6. A statement that a determination regarding responsibility is made at the conclusion of the grievance process;
7. that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney; and
8. A statement that the parties/advisors may inspect and review evidence in accordance with this Procedure. The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence.

This written notice will be sent to the parties within three business days of the filing of a formal complaint.

If, in the course of the investigation, the District decides to investigate allegations of sexual harassment that are not included in the initial written notice of allegations, the

District shall provide notice of the additional allegations to the parties whose identities are known.

*Interviews with a respondent may not occur until this notice has been provided and the respondent is provided reasonable time to prepare before an initial interview.

Informal Resolution:

The informal resolution process can be offered by the Title IX Coordinator.

If both parties wish to proceed through the informal resolution process and provide informed, voluntary, written consent, this process may be pursued. This process may not be used when the allegation of sexual harassment involves an employee of the school or when the Title IX Coordinator believes the allegations could present a future risk of harm. **At any time prior to agreeing to a resolution, any party has the right to withdraw from informal resolution and resume the grievance process with respect to the formal complaint.** The facilitator of the informal process will be free from conflicts of interest or bias and will have received special training regarding how to conduct this informal process.

Parties who wish to proceed using informal resolution can withdrawal from this process by notifying the Title IX Coordinator in writing either via mail, email, or providing a written document to the Title IX Coordinator in person. A party can inform the Title IX Coordinator they wish to withdrawal from the process verbally, but written withdrawal will be needed as well. Parties may withdrawal from the informal process at any time before a decision has been reached.

Mediation

The Title IX Coordinator can offer a mediation process between the parties after written consent has been provided. Facilitators of the mediation will be specially trained in Title IX and will be selected by the Title IX Coordinator. The Facilitator(s) must not be biased against any of the parties or have a conflict of interest. If the parties mutually and voluntarily agree that the Title IX Complaint has been sufficiently addressed using the informal process, then no further action need be taken. The results of the informal resolution shall be maintained by the facilitator in writing.

The informal resolution is permitted to include terms such as: restrictions on contact, restrictions on the Respondent's participation in programs and/or activities, attendance at specific events, restrictions that could have been imposed in the disciplinary process such as suspensions and loss of certain privileges.

Gathering Evidence

Should a Title IX investigation occur, the burden of gathering evidence rests on the School.

During the collection of evidence, the school is not allowed to access a party's personal records if they are maintained by a physician, attorney, psychologist, psychiatrist or other professional with whom the student shares privileged information unless the student provides written consent.

Evidence about the complainant's sexual predisposition or prior sexual behavior are not permissible and/or relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Equal opportunity will be provided for all parties to provide witnesses and evidence, including written expert testimony and inculpatory and exculpatory evidence. Parties cannot be prevented from discussing the allegations or collecting relevant evidence. The school will use the preponderance of the evidence standard for all complaints of sex-based harassment regardless of whether the complaint is against students or school employees.

- **Interviews**

Persons alleged to have violated the school's sex-based discrimination/harassment policy will be provided with written notice prior to any interviews or meeting involving the Title IX complaint. The notice will include the date, time, location, participants, and purpose of the interview/meeting and will allow the respondent enough time to properly prepare for the meeting.

- **Inspection of Evidence/Investigative Report**

The school will send the parties, and their advisors, evidence directly related to the allegations, along with an investigative report outlining the investigative process.

Prior to providing evidence to the parties, the investigator may redact confidential information that is not directly related to the allegations or that is otherwise barred from use under Title IX or by privilege (e.g., treatment records), the Family Educational Rights and Privacy Act and/or 603 CMR 23.00. Information that is directly related to the investigation, and that is not expressly barred from disclosure under Title IX (e.g., treatment records), the Family Educational Rights and Privacy Act, and/or 603 CMR 23.00, must be made available for review by both parties.

The parties and their advisors shall be prohibited from dissemination of any of the evidence for any purpose not directly related to this grievance procedure.

- **Opportunity to Respond**

Parties will have 10 calendar days to inspect, review, and respond to the evidence and report.

- **Opportunity to Request an Extension**

The parties can submit a request for an extension to the response period to the Title IX Coordinator if they need more time to review the evidence and report and provide a response. The Title IX Coordinator will review the request and can determine whether or not the request is reasonable and appropriate.

The investigator will attempt to conclude the evidentiary process within three weeks. This may be extended if more time is necessary to appropriately investigate the matter.

Consolidation of Complaints

Complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances may be consolidated at the discretion of the Title IX Coordinator.

If, in the course of an investigation, the School decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the original notice, the School must provide notice of the additional allegations to the parties whose identities are known.

The Determination

After the conclusion of the investigation, all relevant evidence will be reviewed and the Decision Maker will reach conclusions about whether the respondent engaged in the alleged harassment.

The Investigator may also be the Decision Maker. In cases where the Decision Maker was not the Investigator, the Decision Maker is permitted to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.

- The decision maker must consider the following information:
 - 1) The school's policy/policies that were alleged to be violated;
 - 2) A description of the procedural steps that were taken (including notices sent, interviews conducted, evidence gathered);
 - 3) The Decisions Maker's findings of fact;
 - 4) Whether the determined facts equal a violation of school policy and/or code of conduct;
 - 5) Any disciplinary sanctions the school should consider imposing and any remedies to the complainant if applicable;

The Decision Maker will notify the parties in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable.

The determination will be sent to the parties simultaneously along with the appeals information.

The Appeals Process

Parties may appeal after a dismissal occurs, or a determination is issued. Parties will have five (5) days to appeal the dismissal or determination.

Grounds for Appeals

- 1) If a party believes that procedural irregularity altered the outcome of the determination or dismissal.
- 2) New evidence has been discovered that was not reasonably available at the time of the determination or dismissal. *An appeal for this reason may occur after the five day appeal requirement but not after one year.
- 3) A conflict of interest on the part of a Title IX Coordinator, investigator who compiled evidence, or the decision maker existed, and that conflict of interest affected the determination or dismissal.

To file an appeal, a party must notify the Title IX Coordinator in writing that they wish to appeal the determination. All parties will have an equal opportunity to submit a written statement supporting or challenging the determination. The Title IX Coordinator will inform the parties that they have 7 days to submit their written statements.

The person who will decide the appeal cannot be the decision maker, the investigator, or the Title IX Coordinator. Upon review of the parties' written statements (if they so choose to provide them), and review the determination, the appeals decision maker will issue a written decision and send it to the parties simultaneously. The determination becomes final after the appeals process.

Remedies:

If the school makes a determination that sex discrimination/harassment did occur, the school will help effectively implement remedies for a complainant.

Retaliation is prohibited.

Retaliation against a complainant, witness, or any other participant in an investigation because they have filed a harassment or sex-based harassment complaint or assisted or participated in a harassment or sexual harassment investigation or proceeding, is strictly prohibited. Anyone found to have retaliated against another in violation of [School's] policy will be subject to disciplinary action.

Retaliation is any intimidation, threats, coercion, or discrimination against any person for the purpose of interfering with any right or privilege, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, including in an informal resolution process.

Any person who experiences retaliation for exercising their rights under Title IX can file a retaliation complaint with the Title IX Coordinator.

If the Grievance Process may Result in Discipline:

If upon the conclusion of this grievance process, discipline appears warranted, the school will follow the usual disciplinary process for students outlined within the student handbook. The school will also follow the required disciplinary process for school employees.

Recordkeeping:

Records related to this Procedure will be maintained for a period of seven (7) years:

- (1) For each complaint of sex discrimination, records documenting the informal resolution process and/or the grievance procedures and the resulting outcome.
- (2) For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or records documenting the actions the District took to meet its obligations under Title IX.
- (3) For all training all materials used to provide training to meet its obligations under Title IX. A District must make these training materials available upon request for inspection by members **of the public.**