



# HUM-P020-TITLE IX SEX-BASED HARASSMENT GRIEVANCE PROCEDURE

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## ADMINISTRATIVE POLICY

### HUMAN RESOURCES

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#### SUMMARY

This procedure outlines for steps the District will follow to promptly and equitably receive, investigate, and resolve complaints of Title IX sex-based discrimination involving students, staff and/or other individuals who participate in or are attempting to participate in the District educational program or activity

#### DEFINITIONS

##### Advisor

An individual identified by the complainant or the respondent to participate and support them in any meetings, interviews, or proceedings related to the formal complaint.

##### Complaint

1. A student or employee who is alleged to be the victim of conduct that could constitute sex discrimination, regardless of whether the individual files a complaint or not. At the time of filing a complaint, a complainant must be participating in or attempting to participate in the education program or activity.
2. A parent, guardian, or other authorized legal representative with the legal right to act on behalf of the complainant.
3. The District's Title IX coordinator can serve as a complainant.
4. With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, any District student or employee, or person, who was participating or attempting to participate in the District's education program or activity at the time of the alleged sex discrimination also has a right to make a complaint.

##### Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.

##### Domestic Violence

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 Oregon's domestic or family violence laws, or by any other person against an adult or youth victim who is protected from that person's acts under Oregon's domestic or family violence laws.

##### Evidence - Inculpatory

Evidence that shows a person's involvement in an act; evidence that can establish guilt.

**Evidence - Exculpatory**

Evidence that serves to exonerate a respondent.

**Informal Resolution**

A process facilitated by the District that allows for a resolution of a Title IX complaint informally, in lieu of following the steps outlined in the formal complaint process. Participation in an informal resolution process is voluntary for the complainant and the respondent. Informal resolution may not be offered when the formal complaint involves an employee allegedly sexually harassing a student.

**Investigation**

The gathering of evidence from multiple sources for presentation to the decision-maker. Evidence may include but is not limited to, interviews, reports, photos, social media posts or messages, electronic communications, and/or educational records.

**Knowledge**

Knowledge by any Salem-Keizer Public Schools employee about conduct that reasonably may constitute sex discrimination in a District program or activity under Title IX.

**Parties**

The complainant and respondent.

**Remedies**

Actions taken, or services provided by the District when a respondent is found responsible that are designed to maintain or restore the complainant's equal access to education and activities. Remedies may include some of the same individualized services previously provided as supportive measures. Remedies are not required to be non-disciplinary or non-punitive and need not avoid burdening the respondent.

**Respondent**

An individual who has been reported to be the perpetrator of conduct that could constitute sex discrimination.

**Sanctions**

Actions taken against the respondent as a result of a finding of responsibility.

Potential disciplinary sanctions include:

- Student discipline up to and including suspension and expulsion;
- Removal from various activities, committees, extra-curricular, positions, etc.;
- Disqualification for awards and honors;
- Employee discipline up to and including termination, in accordance with laws, agreements, contracts, and handbooks.

**Sexual Assault**

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI.

**Sex-Based Harassment**

A form of sex discrimination that includes sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity that is:

1. Quid Pro Quo Harassment: An employee, agent, or other person authorized by the District to provide an aid, benefit, or service under the District's educational program or activity conditioning

(either explicitly or implicitly) the provision of such an aid, benefit, or service on the person's participation in unwelcome sexual conduct; or

2. 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 District's education program or activity; or
3. Sexual assault, domestic violence, dating violence and stalking.

### **Sex Discrimination**

Discrimination based on an individual's sex, including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

### **Stalking**

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's own safety or the safety of others or suffer substantial emotional distress.

### **Supportive Measures**

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 sex discrimination. These services are made available without charge to the complainant and/or the respondent before or after the filing of a complaint or where no formal complaint has been filed, and include measures designed to protect the safety of all parties and/or the District's educational environment.

## **INSTRUCTION**

### **1. REPORTING**

- a. Any person may make a report of sex-based harassment or sex discrimination as defined by Title IX. This report may be made in person or by mail, telephone, e-mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. The report can be made at any time. Reports made outside of normal business hours (Monday to Friday, 8am to 5pm) may not be reviewed by the Title IX Coordinator until the next business day.
- b. All employees are required to notify a Title IX Coordinator when the employee has knowledge about conduct that reasonably may constitute sex-based harassment or sex discrimination under Title IX.
- c. The Executive Director of Human Resources is designated as the Title IX Coordinator. The Title IX Coordinator will coordinate the District's efforts to comply with its responsibilities related to Administrative Policy HUM-A036 "Title IX Policy" and this procedure. Contact information for the Title IX Coordinator is posted on the District website and included in each handbook or catalog.
- d. If the information reported may constitute child abuse, the Title IX Coordinator will ensure that a mandatory report is/was made to the Oregon Department of Human Services or a law enforcement agency.

### **2. RESPONSE AND SUPPORTIVE MEASURES**

- a. The District will promptly respond when there is knowledge, even if a formal complaint has not yet been filed. The District shall treat complainants and respondents equitably by providing supportive measures and by following a grievance procedure prior to imposing any disciplinary sanctions.

- b. The Title IX Coordinator shall promptly contact the complainant to:
  - i. Discuss the availability of supportive measures;
  - ii. Consider the complainant's wishes regarding a complaint. In certain circumstances, the Title IX Coordinator may initiate a complaint and proceed with an investigation despite a complainant not wishing to file a complaint.
  - iii. Explain supportive measures that are available whether or not a complaint is filed;
  - iv. Explain the process for filing a complaint, the grievance process and the informal resolution process.
- c. If after an individualized safety and risk analysis, it is determined that there is an immediate threat to the health or safety of any person, an emergency removal of a student respondent can take place. The District will provide the student respondent with notice and an opportunity to challenge the decision immediately following the removal.
- d. If the complainant or respondent is a student with a disability, the Title IX Coordinator shall consult with member(s) of the IEP or Section 504 team in implementing supportive measures or emergency removal of the respondent.
- e. An employee may be placed on administrative leave pending the completion of the Title IX grievance process.
- f. Either party may appeal the District's decision to provide, deny, modify or terminate supportive measures by following the appeal process outlined in section 12.

### **3. COMPLAINT**

- a. Complaints may be made in writing or verbally to the Title IX Coordinator.
- b. Consolidation of Complaints: The District may consolidate complaints of sex discrimination against more than one respondent, or by one or more 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.
- c. Written Notice:
  - i. Upon receipt of a complaint, the District will provide the following written notice to the parties:
  - ii. Notice of the District's grievance process, including any informal resolution process; and
  - iii. 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 incidents, if known;
  - iv. Retaliation is prohibited; and
  - v. The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence; and
  - vi. Notification that knowingly making a false statement or knowingly submitting false information during the grievance process could lead to disciplinary action; and
  - vii. If, in the course of an investigation, the District determines that investigation into additional allegations of sex discrimination by the respondent toward the complainant is warranted and the information was not included in the original written notice that was provided to the parties, the District will notify the parties of the additional allegations.

### **4. SUPPORTIVE MEASURES**

- a. The Title IX Coordinator will contact the complainant and respondent to discuss

supportive measures.

- b. The District must 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 District to provide supportive measures.

## **5. EVIDENCE**

- a. The following types of evidence, and the questions seeking that evidence, are impermissible and will not be disclosed or used, regardless of whether they are relevant:
  - i. Evidence that is protected under a privilege recognized by Federal or State law or evidence that provides a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
  - ii. A party's or witness's records that are made or maintained by a physician, psychologist or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the District obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
  - iii. Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

## **6. INVESTIGATION**

- a. The District will provide for adequate, reliable, and impartial investigation of complaints. The Title IX Coordinator will coordinate the investigation. The investigation may be conducted by a trained District employee or an external investigator. Typically, the District will complete the investigation process within 60 days of the submission of a complaint. However, upon written notification to the parties, the District may temporarily delay the grievance process or provide a limited extension of time for good cause.
  - i. The investigation must:
    - 1. Include an objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence;
    - 2. Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance;
    - 3. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the District and not on the parties;
    - 4. Provide an equal opportunity for the parties to present fact witnesses, and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible;
    - 5. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence, so long as such communications are not retaliatory in nature;
    - 6. Provide the parties with sufficient time to prepare for any investigatory interviews or other meetings;
    - 7. Provide both parties an equal opportunity to access evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:
      - a. The District will provide an equal opportunity to access the relevant and not otherwise impermissible evidence, or an accurate

- description of this evidence.
- b. The District will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
- c. The District will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures.

## **7. DETERMINATION REGARDING RESPONSIBILITY**

- a. The decision maker will use the preponderance of evidence standard of proof to determine whether a violation has occurred.
- b. Typically, the District will make a determination within 15 days of completion of the investigation. However, upon written notification to the parties, the District may temporarily delay the grievance process or provide a limited extension of time for good cause.
- c. The decision maker shall evaluate the relevant and not otherwise impermissible evidence when determining whether sex discrimination occurred.
- d. The decision maker may ask questions of the parties and witnesses in order 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 questions may be presented in verbal or written format.
- e. Credibility determinations are not based on the person's status as a complainant, respondent or witness.
- f. The District will not impose discipline on the respondent for sex discrimination prohibited by Title IX unless, and until, there is a determination regarding responsibility made at the conclusion of the grievance process.
- g. The District shall notify the parties in writing of the determination about 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.
- h. The determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

## **8. DISCIPLINE AND REMEDIES**

- a. If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
  - i. Coordinate the provision and implementation of remedies to a complainant and other people the District identifies as having had equal access to the District's education program or activity limited or denied by sex discrimination;
  - ii. Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
  - iii. 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.
- b. Potential disciplinary sanctions include:
  - i. Student discipline up to and including suspension and expulsion;
  - ii. Removal from various activities, committees, extra-curricular, positions, etc.;
  - iii. Disqualification for awards and honors;
  - iv. Employee discipline up to and including termination, in accordance with laws, agreements, contracts, and handbooks.
- c. The Title IX Coordinator is responsible for effective implementation of any remedies. Potential remedies include, but are not limited to:
  - i. Academic supports such as tutoring or retaking a class without penalty;
  - ii. Access to counseling and/or advocacy services;
  - iii. Modified schedules;

- iv. Additional Title IX training for students and/or staff; and
- v. Data reviews, assessments, or climate checks.

## **9. INFORMAL RESOLUTION**

- a. If the District receives a complaint, at any time prior to reaching a determination regarding responsibility, the District may offer an optional informal resolution process, provided that the District:
  - b. Provides written notice to the parties disclosing:
    - I. The allegations;
    - II. 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, provided that 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
    - III. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
  - c. Obtains the parties' voluntary written consent to the informal resolution process; and
  - d. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
  - e. Typically, the District will complete the informal resolution process 30 days of the process being initiated. However, upon written notification to the parties, the District may temporarily delay the informal resolution process or provide a limited extension of time for good cause.

## **10. CONFLICT OF INTEREST**

- a. No person designated as a Title IX Coordinator, investigator, decision-maker, the decision-maker for an appeal, or any person designated by the District to facilitate an informal resolution process may have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- b. A person serving as the informal resolution facilitator may not serve as an investigator or decision-maker. The Title IX Coordinator, the investigator and decision maker can otherwise be the same person.

## **11. DISMISSAL OF COMPLAINT**

- a. The District may dismiss a complaint regarding Title IX sex discrimination if:
  - i. The alleged conduct did not occur in the District's education program or activity (including locations, events, or circumstances over which the District exercised substantial control over both the respondent and the context in which the sex discrimination allegedly occurred); or
  - ii. The District is unable to identify the respondent after taking reasonable steps to do so; or
  - iii. A complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the District determines that, without the complaint's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
  - iv. The respondent is not participating in the District's educational program or activity and is not employed by the District; or
  - v. The alleged conduct would not constitute sex discrimination, even if proven. Before dismissing the complaint, the District will make reasonable efforts to clarify the allegations with the complainant.;
  - vi. Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- b. Upon dismissal of a complaint, the District must promptly and simultaneously send written notice of dismissal to the parties, including the reason(s) for the dismissal and the process for appealing the decision.
- c. The dismissal of a complaint under Title IX does not preclude the District from continuing

any investigation and taking action under other District policies or procedures. The District may have a legal obligation to do so.

- d. When a complaint is dismissed, the District will, at a minimum:
  - i. Offer supportive measures to the complainant as appropriate;
  - ii. If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- e. Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within the District's education program or activity.

## **12. APPEALS**

- a. Either party may file an appeal from a determination regarding responsibility, a decision regarding supportive measures or from a dismissal of a formal complaint by filing a written request with the Deputy Superintendent. The review will be conducted by the Deputy Superintendent. Requests must be submitted within 10 working days of the person receiving notification of the determination, supportive measures or dismissal.
- b. Individuals have the right appeal the District's final decision to US Department of Education Office of Civil Rights.
- c. When an appeal is filed, the District must:
  - i. Notify the other party in writing;
  - ii. Implement appeal procedures equally for both parties;
  - iii. Ensure that the decision-maker(s) for the appeal is trained, did not take part in an investigation of the allegations or dismissal of the complaint and does not have a conflict of interest or bias as described above;
  - iv. Give both parties an equal opportunity to submit a written statement in support of or challenging the outcome;
  - v. Issue a written decision describing the result of the appeal and the rationale for the result; and
  - vi. Provide the written decision simultaneously to both parties.
- d. The District will notify the parties of the decision within 10 business days.

## **13. RECORDS**

- a. Records will be created and maintained in accordance with state and federal law

## **14. NO RETALIATION**

- a. Neither the District or any person may retaliate against an individual for reporting, testifying, providing evidence, being a complainant, otherwise participating, or refusing to participate in any investigation or process in accordance with this procedure. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance process does not constitute retaliation.
- b. Identities of the parties and participating persons will be kept confidential to the extent allowed by law and the process outlined in this procedure.
- c. Alleged violations of Section 3.14- No Retaliation will be investigated utilizing HUM-P020 Title ix Sex-Based Harassment Grievance Procedure.

## **15. TRAINING**

- a. Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must receive training on the following:
  - I. The definitions of sex discrimination and sex-based harassment under Title IX;
  - II. The scope of the District's education program or activity;
  - III. Requirements upon receiving notice
  - IV. How to conduct an investigation;
  - V. How to conduct a grievance process, including appeals, and informal resolution



- processes; and
  - VI. Avoiding prejudgment of the facts, conflicts of interest and bias; and
  - VII. Meaning and application of relevant evidence in relation to grievance process.
- b. Materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes, must promote impartial investigations and adjudications of complaints of sex discrimination, and must be made available upon request.

#### **APPLICABILITY**

- All Salem-Keizer Employees and Students

#### **ASSOCIATED DOCUMENTS**

HUM-A036, Title IX Policy  
HUM-A029, Sexual Harassment  
PAP-A001, Child Abuse and Sexual Conduct  
ADM-A009, Equal Educational Opportunity  
HUM-A017, Equal Employment Opportunity  
HUM-A001, Expression of Breast Milk

#### **APPROVAL AUTHORITY**

- Executive Director of Human Resources

#### **REVISION HISTORY**

- 8/24/20 – Initial draft
- 5/18/22 – Added 2.14 (Definition of Sanctions); Updated 3.3.6.1
- 8/19/24 – Major edits to entire document to comply with new Title IX regulations; Updated to new QAM template.
- 10/14/24 – Changed Superintendent to Deputy Superintendent in section 12-A