Title IX Sexual Discrimination Procedure

Policy Information

Series A - Foundations and Commitments

Title IX Sexual Discrimination Procedure

Policy # ACGB

FILE: ACGB

Title IX Sexual Discrimination Grievance Procedure

The Bourne Public Schools is committed to maintaining school environments free of sexual discrimination.

OVERVIEW

Sexual discrimination in any form or for any reason is prohibited. This includes sexual discrimination 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.

Retaliation against any individual who has brought sexual discrimination to the attention of school officials, or against an individual who has participated, or refused to participate, in the investigation thereof is unlawful and will not be tolerated by the Bourne Public Schools. Conduct that reasonably may constitute retaliation is subject to this Grievance Procedure.

The Bourne Public Schools has adopted 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.

SCOPE

The Title IX Sexual Discrimination Grievance Procedure has been developed in accordance with the revised Title IX regulations, 34 CFR Part 106, effective August 1, 2024 which mandate specific procedures for responding to and investigating allegations of sexual discrimination under Title IX. This Grievance Procedure applies to all allegations of sexual discrimination under Title IX, including sex-based harassment which is further defined in the Definitions section below. For the purposes of this procedure the term "sexual discrimination" shall include the terms "sex-based harassment" and "sexual harassment" except as may otherwise be distinguished .

The Title IX Sexual Discrimination Grievance Procedure applies to conduct that occurs within the United States in an education program or activity of the District, regardless of whether such District program or activity is conducted on or off school grounds. Additionally, this Grievance Procedure applies to the District's obligation under Title IX to address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States. A District education program or activity includes locations, events, or circumstances over which the District exercised substantial control over both the respondent and the context in which the sexual harassment occurred.

Allegations of conduct that meet the definition of sexual discrimination, including sex-based harassment under Title IX will be addressed through the Title IX Sexual Discrimination Grievance Procedure. Allegations of conduct that meet the definition of sexual discrimination, including sex-based harassment under Title IX, and simultaneously meet the definitions of sexual harassment under Title VII of the Civil Rights Act of 1964 (employees), M.G.L. c. 151B (employees), and/or M.G.L. c. 151C (students), will also be addressed through the Title IX Sexual Discrimination Grievance Procedure.

Allegations of conduct that do not meet the definition of sexual discrimination, including sex based harassment under Title IX, but could, if proven, meet the definition(s) of sexual harassment under Title VII (employees), M.G.L. c. 151B (employees), and/or M.G.L. c. 151C (students), will be addressed through the District's Civil Rights Grievance Procedure. (See exception under Section II, Part 4, Step 4 below). The definitions of sexual harassment under Title VII, M.G.L. c. 151B, and M.G.L. c. 151C are set out in the Civil Rights Grievance Procedure.

PROCEDURE

The District's Civil Rights Grievance Procedure is available at: [Civil Rights Grievance Procedure].

Essential Requirements of Title IX Grievance Procedure:

A. The Bourne Public Schools will treat complainants and respondents equitably.

B. The Bourne Public Schools 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.

C. The Bourne Public Schools presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

D. The Bourne Public Schools has established timeframes for the major stages of the grievance procedures which are set forth in detail below.

E. The Bourne Public Schools allows for the reasonable extension of time frames 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.

F. The Bourne Public Schools 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.

G. The Bourne Public Schools 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.

H. The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the Bourne Public Schools to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

• Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality; • 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 Bourne Public Schools obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
• 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 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. 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.

I. 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.

DEFINITIONS

Complainant: An individual who is alleged to be the victim of conduct that could constitute sexual discrimination under Title IX. Parents and/or legal guardians of a complainant are not considered a complainant but may file a Formal Complaint on behalf of a minor child and act on behalf of the minor child in any Title IX matter. For the purpose of this Procedure the terms "complainant" and "alleged victim" shall have the same meaning.

Formal Complaint: A document or electronic submission filed by a complainant, that contains the complainant's physical or digital signature or otherwise indicates that the complainant is the person filing the Formal Complaint, or a document signed by the Title IX coordinator, that: (1) alleges sexual discrimination against a respondent; and
(2) requests that the District investigate the allegation of sexual discrimination. At the time of filing a Formal Complaint, the complainant must be participating in or attempting to participate in the District's education program or activity with which the Formal Complaint is being filed.

Sex-Based Harassment: Under Title IX, Sex-Based Harassment is a form of sexual discrimination which includes three types of misconduct based on sex:
(1) any instance of quid pro quo harassment by a school employee;
(2) unwelcome conduct on the basis of sex, including unwelcome conduct based on sex stereotyping or on the basis of traditional notions of masculinity and femininity, that is sufficiently severe and pervasive and objectively offensive conduct, effectively denying a person equal educational access; or
(3) any instance of sexual assault, dating violence, domestic violence, or stalking as defined below.

Sexual Assault: An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting system and set out below:
● 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.
● Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her

age or because of his/her temporary or permanent mental incapacity. In Massachusetts, pursuant to M.G.L. c. 265, § 13B, a child under the age of 14 is incapable of giving consent to indecent touching.

● Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

● Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent. In Massachusetts, pursuant to M.G.L. c. 265, § 23, the the statutory age of consent is 16 years of age.

For the purposes of the definition of sexual assault, the term "consent" shall be defined in a manner consistent with Massachusetts laws.

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. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence: A felony or misdemeanor crime 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 in which the crime of violence occurred; 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 in which the crime of violence occurred.

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

For the purposes of this definition, "Course of conduct" means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Party or Parties: The complainant and/or respondent.

Principal: The Principal or Principal's designee.

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

Superintendent: The Superintendent or Superintendent's designee.

Supportive Measures: Individualized services reasonably available that are non-punitive, non disciplinary, and not unreasonably burdensome to the Complainant or Respondent, while designed to ensure equal educational access, protect safety, and/or deter sexual discrimination. Supportive Measures may be offered before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. 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, and/or deter sexual discrimination.

Supportive measures available to complainants and respondents include but are not limited to: counseling; extensions of deadlines or other course-related adjustments; modifications of work or class schedules; campus escort services; mutual restrictions on contact between the parties; changes in work locations; leaves of absence; increased security and monitoring of certain areas of the building and/or campus; and other similar measures. Violations of the restrictions imposed by supportive measures may be considered a violation of school rules and may also be considered in determining whether sexual discrimination has occurred.

Title IX Coordinator: Employee(s) designated by the District to coordinate its efforts to comply with Title IX.

REPORTING SEXUAL DISCRIMINATION

A. Who May Report Sexual Discrimination: Anyone may report an allegation of sexual discrimination

B. How to Report Sexual Discrimination: Individuals are encouraged to report allegations of sexual discrimination the Title IX Coordinator or the Principal, but any District employee who receives a report of sexual discrimination will respond to the report as outlined below.

C. Internal Reporting: Any District employee who receives a report of sexual discrimination shall respond by promptly informing the Principal or Title IX Coordinator of the report. Any District employee who observes sexual discrimination of a student should intervene to stop the conduct and shall promptly inform the Principal or Title IX Coordinator of the incident. If a report involves an allegation against the Principal or Title IX Coordinator, the District employee shall instead report the allegation to the Superintendent.

Any Principal who receives a report of sexual discrimination shall promptly inform the relevant Title IX Coordinator of the report.

D. District's Response to Report: The District will respond to all reports of sexual discrimination promptly and equitably, and in a manner consistent with this Procedure and any other relevant District procedures and policies.

Upon receipt of a report, the Title IX Coordinator shall:
(1) Promptly and confidentially contact the complainant to discuss the availability of supportive measures;

(2) Inform the complainant of the availability of supportive measures with or without the filing of a Title IX Formal Complaint;
(3) Consider the complainant's wishes with respect to supportive measures; (4) If the District does not provide the complainant with supportive measures, document the reasons why such response was reasonable; and
(5) Explain to the complainant the process for filing a Title IX Formal
Complaint. Only the filing of a Title IX Formal Complainant will trigger the Title IX Formal Complaint grievance process, outlined in Section II.

FILING A TITLE IX FORMAL COMPLAINT

Only the filing of a Title IX Formal Complaint will trigger the Title IX Formal Complaint grievance process, outlined below.

A. Who may file a Title IX Formal Complaint: Although anyone may report sexual harassment, only a complainant or a Title IX Coordinator may file a Title IX Formal Complaint. 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 the Formal Complaint, the Title IX Coordinator is not a complainant or a party during the grievance process and must comply with the requirement to be free from conflicts or bias.

B. Processing of a Title IX Formal Complaint: Title IX Formal Complaints will be investigated promptly and equitably by the Title IX Coordinator or designee, as follows:

Step 1: Title IX Formal Complaint is filed:

(1) A Formal Complaint shall state (if known to the reporter or alleged victim) the name(s) of the persons involved, witnesses to the conduct, if any, a description of the conduct, and to the extent possible, the dates and locations of the conduct. A Formal Complaint will not be dismissed solely because it was not completely filled out or it was filled out incorrectly.
(2) A Formal Complaint may be filed at any time, including during non-business hours. Formal Complaints submitted outside of normal business hours will be deemed received on the following school working day.
(3) At the time of the filing of the Formal Complaint, the alleged victim must be participating in or attempting to participate in the education program or activity of the school district with which the Formal Complaint is filed.
(4) A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information for the Title IX Coordinator listed in this Procedure, and by any additional method designated by the school.
(5) Consolidation of Formal Complaints: The District may consolidate 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. When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable. The District is not permitted to consolidate complaints if consolidation would violate the Family Educational Rights and Privacy Act (FERPA). Consolidation would not violate FERPA when the District obtains prior written consent from the parents or a student who has reached 18 years of age to the disclosure of their education records.
(6) The District may consider the use of the Informal Resolution Process with the consent of the parties. See Section II(E)
(7) Throughout this process, there shall be a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

Step 2: Consider Supportive Measures for both the complainant and the respondent: Once a Formal Complaint is filed, the Title IX Coordinator will ensure that supportive measures are considered for both parties. See Section I(D).

Step 3: Written Notice of Allegations: Upon receipt of a Formal Complaint, the District shall send written notice to the parties which shall 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.

4) A statement prohibiting knowingly submitting false information

5) A statement that the respondent is presumed not responsible for the alleged conduct

6) 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

8) That the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. If the District provides a description of the evidence the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

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.

Step 4: Consider Whether Dismissal of Formal Complaint Warranted: Some Formal Complaints will be subject to mandatory or discretionary dismissal under Title IX.

1. The District may dismiss a complaint of sex discrimination if:
• The District is unable to identify the respondent after taking reasonable steps to do so;
• The respondent is not participating in the District's education program or activity and is not employed by the District;
• The 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 complainant'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
• The District determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, the District will make reasonable efforts to clarify the allegations with the complainant.

2. Upon dismissal, the District will promptly notify the complainant in writing of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the District will also notify the respondent simultaneously of the dismissal and the basis for the dismissal.

3. The District will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then the District will also notify the respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:
• Procedural irregularity that would change the outcome;
• New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
• The Title IX Coordinator, investigator, or decision maker 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.

4. If the dismissal is appealed, the District will:
• Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
• Implement appeal procedures equally for the parties;
• Ensure that the decision maker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
• Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;9 9 *Note to Drafter*: Training requirements are set forth in § 106.8(d).
• Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
• Notify the parties of the result of the appeal and the rationale for the result.

5. When a complaint is dismissed, the District will, at a minimum: • Offer supportive measures to the complainant as appropriate; • If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
• 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.

6. Dismissal of a Formal Complaint for purposes of Title IX shall not preclude the District from addressing the allegations under any other relevant District policies or procedure(s), including but not limited to, the Civil Rights Grievance Procedure, the Bullying Prevention and Intervention Plan, the Student Code of Conduct, and/or a collective bargaining contract, nor will it preclude the District from addressing the allegations pursuant to the grievance process set out in Section II of this Procedure. The Title IX Coordinator shall have the discretion to make any such referrals and proceed as appropriate in regard to the allegations.

Step 5: Initial Investigation: All Formal Complaints will be investigated by the Title IX Coordinator or other individual designated to serve as the investigator by the Title IX Coordinator. The investigator shall be responsible for seeking and gathering evidence relative to the investigation. Any Formal Complaint against an employee who holds a supervisory position shall be investigated by a person who is not subject to that supervisor's authority. During the Formal Complaint resolution process:

(1) The District will provide for adequate, reliable, and impartial investigation of complaints.
(2) Standard of Proof: The investigator shall make factual findings based on a preponderance of the evidence standard.
(3) The burden is on the District —not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.
(4) The District will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.
(5) The District shall provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
(6) The District shall not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no "gag" orders).
(7) Each party may have one (1) advisor of their own selection and at their own expense participate in this grievance process. In the case of a student under the age of 18, this advisor may be in addition to the student's parents/guardians. Any restrictions on the participation of an advisor will be applied equally to each party. The advisor may, but is not required to, be an attorney. Any evidence received by an advisor in this process is subject to confidentiality and may be used only for the purpose of the grievance process. Advisors are prohibited from disseminating or disclosing such evidence outside of the grievance process.
(8) The District shall send prior written notice to the parties of any investigative interviews, meetings, or hearings in which their participation is invited or expected.
(9) Privacy of Medical Treatment and Mental Health Treatment Records: The District may not access or use either the complainant's or the respondent's medical, psychological, or similar treatment records unless the District obtains the party's written consent to do so.

(10) The investigator may impose reasonable timeframes on all parties as required to facilitate the timely completion of the investigation. The investigator may extend any of the timeframes beyond the time periods identified in this Procedure for good cause. If a complaint or report of sexual discrimination is received within three (3) weeks of the end of the academic school year, the investigator will attempt to complete the investigation by the end of the school year. In the event that the investigation extends beyond the last day of school, the District will make reasonable efforts to complete the investigation within the applicable time frames, but may extend the investigation period to account for the unavailability of witnesses while school is not in session. If the investigator extends the investigation, the investigator will notify the parties of the extension and the reasons therefore in writing.

Step 6: Opportunity for Parties to Access and Respond to Evidence: The District must provide the parties with an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence. send
the parties, and their advisor(s) (if they have one) in electronic format or hard copy. If the District provides a description of the evidence it will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party Parties shall be afforded ten (10) calendar days to inspect, review and respond to the evidence. The District shall not require, allow, rely upon, or otherwise use evidence that constitutes information protected from disclosure by a legally recognized privilege, unless it has been waived by the holder of the privilege.
(1) 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.
(2) 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.

Step 7: Completion of the Investigative Report: The District must send the parties, and their advisor, an Investigative Report that fairly summarizes relevant evidence but does not reach any conclusions regarding responsibility, in electronic format or hard copy, within twenty-five (25) school days of receipt of the Formal Complaint, unless otherwise extended for good cause. A copy of the Investigative Report will also be sent to the decision-maker. The decision maker shall not be the same person as the Title IX Coordinator or investigator unless the District has otherwise provided for the same in this Grievance Procedure and has specifically sets forth under what circumstances the single investigator model may be used.

Step 8: Parties' Opportunity to Respond to Investigative Report: The District shall provide each party ten (10) calendar days for the parties to respond to the investigative report. The Investigative Report will notify the parties of the opportunity to submit to the decision maker directed questions of the other party and/or any witness within that same ten (10) calendar days. (See Step 9).

Step 9: Directed Written Questions from the Parties: After the Investigative Report has been sent

to the parties, but prior to reaching a determination regarding responsibility, the decision-maker shall afford both the complainant and the respondent the opportunity to submit to the decision-maker written, relevant questions of the other party or any witness, provide the party with the other party's and/or witness's written responses to said written questions, and allow for additional, limited follow-up questions from each party in writing. Questions that seek disclosure of information protected under a legally recognized privilege, Family Educational Rights and Privacy Act, and/or 603 CMR 23.00 shall not be permitted, unless the person holding the privilege has waived the privilege.

(1) The complainant shall be protected from answering questions about the complainant's prior sexual behavior 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. 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.

(2) Upon receipt of the Investigative Report, each party shall have ten (10) calendar days to submit directed relevant questions to the decision-maker in writing. a. All questions must be posed in a respectful manner (e.g., without
profanity and without attacking a person's character or motivations).

b. Questions that are not relevant will be excluded, and the decision-maker shall explain to the party posing the question the reason(s) for excluding
any question.

(3) Upon receipt of the directed questions from the District, each party and witness shall have five calendar days to respond to those questions in writing.[1]

(4) After receipt of the answers by the parties, any follow-up questions by the parties shall be submitted to the decision-maker in writing within three (3) calendar days, and those follow-up questions shall be responded to in writing within three (3) calendar days of receipt.

[1] The parent or guardian may act on behalf of the party in drafting questions and submitting written answers. In the case of young children, reasonable accommodation based on disability, and/or other good cause, either party and/or any witness may request and have their oral responses reduced to writing by the investigator or Title IX Coordinator.

(5) Each party will be provided a copy of the other party's or witness's written answers.

Step 10: Determination of Responsibility/Findings of Fact by the Decision-Maker: (1) The decision-maker shall issue a written determination of responsibility for any sex discrimination that was determined to have occurred under Title IX. The determination shall be sent to all parties and shall include a description of the procedural steps taken, findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, the range of disciplinary sanctions to which the respondent may be subject, whether remedies will be provided to the complainant, and procedures and bases for appeal. The decision-maker's written determination shall not be completed by the Title IX Coordinator or the investigator.

(2) Standard of Proof: The decision-maker shall make factual findings to determine whether sex discrimination occurred based on a preponderance of the evidence standard. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its

persuasiveness. If the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred
(3) The decision-maker's findings shall be based on an objective review of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.
(4) The decision-maker shall not draw inferences about the determination of responsibility based solely on a party's failure or refusal to answer questions. (5) The written determination must be sent simultaneously to both parties. (6) This determination shall be sent within twenty (20) school days of the issuance of the investigative report unless an extension is agreed upon by the parties or if the process is otherwise reasonably delayed. Except where the parties have agreed to an extension of the timeline or where the process is otherwise reasonably delayed, the written determination shall be issued within sixty (60) school days of receipt of the Formal Complaint.

C. Remedies: If the decision-maker determines that sexual discrimination has occurred, the Title IX Coordinator will, as appropriate:
(1) 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;
(2) Eliminate the harassing environment, which must include but need not be limited to providing remedies to a complainant that are designed to restore or preserve the complainant's equal access to the District's education programs and/or activities. These remedies may be the same individualized services as the supportive measures outlined in Section I(D) above and/or may consist of alternative interventions and/or punitive or disciplinary sanctions that burden the respondent.
(3) 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.

D. Discipline: Persons who engage in sexual discrimination or retaliation may be subject to disciplinary action, including, but not limited to, reprimand, suspension, termination, expulsion (if applicable under M.G.L. c. 71, §§ 37H or 37H ½), or other
sanctions as determined by the District administration, subject to applicable procedural requirements. The Title IX Coordinator will, as appropriate:
(1) Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions (2) 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.
(3) Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent; and
(4) Not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

Although the respondent may, in accordance with Title IX, be subject to emergency removal at any time, pursuant to JIC Student Discipline Emergency, the respondent may not be subject to

disciplinary sanctions for the misconduct defined under this Procedure until after this grievance process has been completed.

No discipline may be imposed on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.

Not withstand the above paragraph a determination of no responsibility for purposes of Title IX shall not preclude the District from addressing the allegations under any other relevant District policies or procedure(s), including but not limited to, the Civil Rights Grievance Procedure, the Bullying Prevention and Intervention Plan, the Student Code of Conduct, and/or a collective bargaining contract, nor will it preclude the District from addressing the allegations pursuant to the grievance process set out in Section II of this Procedure. The Title IX Coordinator shall have the discretion to make any such referrals and proceed as appropriate in regard to the allegations.

E. Informal Process: At any time prior to determining whether sex discrimination occurred pursuant to the district's grievance procedure the district, at its discretion, may opt to offer and facilitate informal resolution options, such as mediation or restorative justice. The district may determine whether or not it is appropriate to offer an informal resolution process when it receives information about conduct that reasonably may constitute sex discrimination under Title IX or when a complaint of sex discrimination is made. Both parties must give voluntary, informed, written consent to attempt any offered informal resolution. Any informal resolution under this Procedure will be facilitated by trained personnel.
(1) The informal resolution process is not available to resolve allegations that an employee engaged in sex-based harassment of a student or such a process would conflict with Federal, State or local law.
(2) The informal process is voluntary, and the alleged victim and/or respondent may terminate or decline any informal process at any time and resume the Formal Complaint grievance process. The District, as a condition of participation, must not require the parties to waive the right to an investigation and determination of a complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or the exercise of any other right.

(3) The informal process shall not exceed thirty (30) calendar days, during which time the timelines of the Formal Complaint process will be stayed.

(4) During the informal process the Title IX Coordinator shall 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.

E. Emergency Removal under Title IX: The District may remove a respondent on an emergency basis at any time provided that the District: (1) undertakes an individualized safety and risk analysis; (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual discrimination justifies removal and that there is no alternative to the respondent's emergency removal to mitigate the threat presented; and (3) provides the respondent with notice and the opportunity to challenge the decision immediately following the removal.

F. Anonymous Reports: The District may be on notice of an allegation of sexual discrimination through receipt of an anonymous report. In cases of anonymous reports, the District's obligation is to respond in a manner that is not clearly unreasonable in light of the known circumstances. If the anonymous reporter is the complainant and they request confidentiality, the District can and should offer supportive measures to the extent consistent with maintaining the request for confidentiality. If an anonymous report is received without a disclosure of the complainant's identity, the District will be unable to provide the complainant supportive measures in response to that report. The District may in conformance with applicable state laws and regulations be required to report sexual discrimination identified in an anonymous complaint to state and/or local authorities such as the Massachusetts Department of Children and Families in conformance with state statutes and regulations and/or take actions to protect the safety of the school community (contacting the police, for example) that may result in the identity of the reporting person being disclosed. Although the District shall respond to anonymous reports of sexual discrimination in accordance with this Procedure, a Formal Complaint cannot be filed anonymously.

G. Appeals: The complainant or respondent may appeal from a determination regarding responsibility and/or from the District's dismissal of a Formal Complaint or any allegations therein, only on the following bases:
(1) procedural irregularity that affected the outcome of the matter;
(2) newly discovered evidence that could affect the outcome of the matter; and/or (3) Title IX personnel had a conflict of interest or bias that affected the outcome of the matter.

An appeal may be made to the Superintendent or designee within five (5) calendar days after receiving the determination of responsibility or dismissal. Appeals must be made in writing (email is sufficient) to the Superintendent, Bourne Public Schools. The Superintendent or designee shall:
(1) 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;
(2) Implement appeal procedures equally for the parties;
(3) Ensure that the decision maker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
(4) Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging the outcome;
(5) Decide the appeal no later than thirty (30) calendar days of the date of receipt of the written appeal.

In cases in which it has been determined that a respondent student is subject to long term suspension as a result of a finding of sexual discrimination in accordance with this Procedure, the respondent may elect to exercise their appeal under the disciplinary due process requirements applicable to the circumstances (e.g., M.G.L. c. 71, §§ 37H, 37H ½ or 37H ¾) in place of this appellate procedure. The Title IX Formal Complaint grievance process is deemed complete when either the time period for appeal has lapsed or upon the issuance of the Superintendent's decision on a timely filed appeal.

H. 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.

I. Employment Agencies: The contact information for state and federal employment discrimination enforcement agencies is as follows: (1) Federal: United States Equal Employment Opportunity Commission (EEOC); John F. Kennedy Federal Building; 15 New Sudbury Street, Room 475; Boston, MA 02203-0506; 1-800-669-4000; EEOC Boston Area Office Website: https://www.eeoc.gov/field-office/boston/location; and (2) State: Massachusetts Commission Against Discrimination (MCAD); Boston Headquarters; One Ashburton Place; Sixth Floor, Room 601; Boston, MA 02108; (617)-994-6000; MCAD Website: https://www.mass.gov/orgs/massachusetts commission-against-discrimination

J. Identification of key personnel involved in Title IX process for reports and/or Formal Complaints of sexual discrimination:

Identification of key personnel involved in Title IX process for reports and/or Formal Complaints of sexual discrimination:

● Title IX Coordinator: [NAME], [TITLE] , _____ Public Schools, [ADDRESS, [TEL] [FAX] [EMAIL]

● Investigator(s):
- Elementary Level: Title, Name, Phone, Email
- (Each) High School: Title. Name, Phone, Email
- (Each) Middle School: Title, Name, Phone, ,Email
- All Staff: Title, Name, Phone, Email

● Decision-maker:
- (list each School Title, Name, Phone, Email
-

● Appeal Officer: Title, Name, Phone, Email

● Informal Resolution Facilitator: Title,, Name Phone, Email

The District will notify students, employees, applicants for admission or employment, parents and legal guardians of students, and unions of the name, title, office address, email address and telephone number of the Title IX Coordinator. This information will be prominently displayed on the District's website.

Legal Refs: Section 504 of the Rehabilitation Act of 1973; Title II of the Americans with Disabilities Act of 1990; Title VI of the Civil Rights Act of 1964; Title VII of the Civil Rights Act; Title IX of the Education Amendments of 1972; the Age Act; M.G.L. c. 151B and c. 151C; and M.G.L. c. 76, § 5; SC Policy JICFB, Bullying Prevention; SC Policy AC, Nondiscrimination.

SOURCE: MASC 2024

Approved 11/6/24