REQUIRED REGULATION Descriptor Code: AAC-BR2

TITLE IX SEX DISCRIMINATION GRIEVANCE PROCEDURE

The following procedure is designed to resolve sex discrimination grievances by and against staff, students, parents, and third parties, as described in board policy, in a prompt and equitable manner. In accordance with Title IX of the Education Amendments Act of 1972, the District prohibits discrimination on the basis of sex in any district education program or activity. The District shall respond promptly and effectively when sex discrimination occurs in the district's education program or activity in the United States. The obligation to comply with Title IX and regulations is not obviated or alleviated by any State or local law or other requirement that conflicts with Title IX or associated regulations. The procedure contained in this regulation supersedes the district's policies regarding complaints about personnel and bullying.

The District is prohibited from separating or treating any person differently based on sex in a manner that subjects that person to more than de minimis harm, except in limited circumstances permitted by Federal law, such as in the context of sex-separate living facilities and sex-separate athletic teams.

Definitions

- *Actual knowledge* means notice of sex-based discrimination is given to the Title IX Coordinator, an official with authority to institute corrective measures, or any elementary or secondary school employee. When the District has actual knowledge of alleged sex-based discrimination in a district education program or activity, Title IX requires the District to respond in a manner that is not clearly unreasonable in light of the known circumstances.
- *Complainant* means:
  a. A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
  b. 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 district's education program or activity at the time of the alleged sex discrimination.
- *Complaint* means an oral or written request to the District that objectively can be understood as a request for the District to investigate and make a determination about alleged discrimination under Title IX.
- *Confidential employee* means:
  a. An employee of the District whose communications are privileged or confidential under Federal or State law. The employee's confidential status, for purposes of this policy, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or
  b. An employee of the District whom the District has designated as confidential under this part for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with

respect to information received about sex discrimination in connection with providing those services.

- *Document filed by a complainant* is a document or electronic submission (such as by e-mail or through an online portal provided for this purpose by the District) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- *Education program* or *activity* includes locations, events, or circumstances over which the District exercises control over both the respondent and the context over which the sex-based discrimination occurred. This includes locations or events that occur on or off school property, and may include computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of, the District.
- *Exculpatory evidence* means evidence tending to exonerate a respondent or helps establish their innocence of the conduct alleged.
- *Formal Complaint* is a document filed by a complainant or signed by the Title IX Coordinator alleging sex-based discrimination against a respondent and requesting that the school investigate the allegation of sex-based discrimination.
- *Inculpatory evidence* means evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish guilt of the conduct alleged.
- *Party* means a complainant or respondent.
- *Pregnancy or related conditions* means:
  a. Pregnancy, childbirth, termination of pregnancy, or lactation;
  b. Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
  c. Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
- *Relevant* means related to the allegations of sex discrimination under investigation. 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 decision-maker in determining whether the alleged sex discrimination occurred.
- *Respondent* means a person who is alleged to have violated the district's prohibition on sex-based discrimination.
- *School property* is defined in NDCC 15.1-19-10(6)(c) as all land within the perimeter of the school site and all school buildings, structures, facilities, and school vehicles, whether owned or leased by a school district, and the site of any school-sponsored event or activity.
- *Sex discrimination or sex-based discrimination* is discrimination on the basis of sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, and includes sex-based harassment.

- *Sex-based harassment* is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in 34 CFR 106.10, that is:
  a. 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 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 (e.g., receiving a grade);

  b. 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 (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
     i. The degree to which the conduct affected the complainant's ability to access the district's education program or activity;
     ii. The type, frequency, and duration of the conduct;
     iii. The parties' ages, roles within the district's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
     iv. The location of the conduct and the context in which the conduct occurred; and
     v. Other sex-based harassment in the district's education program or activity; or

  c. Specific offenses.
     i. Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
     ii. Dating violence meaning violence committed by a person:
        (A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
        (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
           (1) The length of the relationship;
           (2) The type of relationship; and
           (3) The frequency of interaction between the persons involved in the relationship;
     iii. (iii) Domestic violence meaning felony or misdemeanor crimes committed by a person who:
        (A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the District, or a person similarly situated to a spouse of the victim;

(B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
(C) Shares a child in common with the victim; or
(D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction; or

iv. Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
(A) Fear for the person's safety or the safety of others; or
(B) Suffer substantial emotional distress.

- *Sex-based harassment examples* may include, but are not limited to, the following:
  a. Sexual or "dirty" jokes;
  b. Sexual advances;
  c. Pressure for sexual favors;
  d. Unwelcome touching, such as patting, pinching, or constant brushing against another's body;
  e. Displaying or distributing of sexually explicit drawings, pictures, and written materials;
  f. Graffiti of a sexual nature;
  g. Sexual gestures;
  h. Touching oneself sexually or talking about one's sexual activity in front of others;
  i. Spreading rumors about or rating other's sexual activity or performance;
  j. Remarks about an individual's sexual orientation; and
  k. Sexual violence, including rape, sexual battery, sexual abuse, and sexual coercion.

- *Supportive Measures* are individualized services reasonably available that are non-punitive or non-disciplinary in nature, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sex-based discrimination. Examples of possible supportive measures include, but are not necessarily limited to, counseling, extensions of deadlines or course-related adjustments, modifications of work or class schedules, a safety plan, school escort services, mutual contact restrictions, changes in work locations, leaves of absence, increased security and monitoring of certain areas on school property, and other similar measures.

Retaliation Prohibited

The District prohibits any person from intimidating, threatening, coercing, or discriminating against any individual, including complainants, respondents, and witnesses, for the purpose of interfering with any right or privilege secured by Title IX including but not limited to making a report or formal complaint of sex-based discrimination or participating (or refusing to participate) in a sex-based discrimination complaint investigation. This includes instances when a complaint is not substantiated.

Reports of Sex-based Discrimination

Any person may report sex-based discrimination, whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex-based discrimination. A report may be filed in person, by mail, by telephone, by email, or by any additional method provided by the District using the contact information for the Title IX Coordinator as set forth in policy AAC. A report may be made at any time, including during non-business hours, by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator. A report should be filed as soon as possible after the alleged harassment or retaliation allegedly occurred. Delays in filing a report may cause difficulties in the investigation. Anonymous reports are permitted; however, the district's ability to offer supportive measures to a complainant, or to consider whether to initiate a grievance process against the respondent, will be affected by whether the report of sex-based discrimination disclosed the identity of the complainant or respondent.

With Whom Reports of Sex-based Discrimination May be Filed

A report of sex-based discrimination may be filed with the Title IX Coordinator or with any district employee. All non-confidential employees must notify the Title IX Coordinator of conduct that reasonably may constitute sex discrimination. All non-confidential employees are required to report any discrimination or harassment to the Title IX Coordinator when they knew (e.g., received a report, directly observed it) or should have known it was occurring (e.g., overheard students talking about an incident, witnessed discriminatory or harassing conduct on school property or at a school activity). Failure by a non-confidential employee to report under this regulation may result in disciplinary action.

A confidential employee is not required to notify the Title IX Coordinator when a person informs them of conduct that reasonably may constitute sex discrimination under Title IX or this policy. Instead, the District shall notify all participants in the district's education program or activity of how to contact its confidential employees. In addition, the District shall require a confidential employee, in response to a person who informs that employee of conduct that reasonably may constitute sex discrimination under Title IX, to:

1. Explain the employee's status as confidential for purposes of Title IX and the Title IX regulations, including the circumstances in which the employee is not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination (e.g., when the person is providing confidential services and not in circumstances when the employee is performing another role, such as teaching or coaching);
2. Provide that person with contact information for the Title IX Coordinator; explain how to make a complaint of sex discrimination; and
3. Explain that the Title IX Coordinator may be able to offer and coordinate supportive measures as well as initiate an informal resolution process or an investigation under the grievance procedures.

Third-Party Assistance

The Title IX Coordinator or other school official responsible for conducting or overseeing sex-based discrimination investigations is authorized to receive assistance from the district's legal counsel throughout the process.

Responding to Reports of Sex-based Discrimination
After receiving a sex-based discrimination report or having actual knowledge of potentially discriminatory conduct, the Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. If supportive measures are not provided to or as requested by a complainant, the Title IX Coordinator shall document why supportive measures were not provided and why the lack of supportive measures is not clearly unreasonable in light of the known circumstances. Supportive measures should be offered and coordinated as appropriate to the respondent if the District has initiated grievance procedures or offered an informal resolution process to the respondent.

Supportive measures must be designed to preserve the complainant and respondent's access to the district's education programs or activities without unreasonably burdening the other party. Supportive measures must be coordinated by the Title IX Coordinator and kept confidential to the extent reasonably possible. Supportive measures should be reasonably available before or after the filing of a formal complaint or where no formal complaint has been filed.

Disciplinary sanctions or other actions that are not supportive measures shall not be taken against the respondent unless a formal complaint is filed, and an investigation is conducted in accordance with the process set forth herein.

Emergency Removal of the Respondent
In the event a situation arises from the allegations of sex-based discrimination and the respondent poses an immediate threat to the physical health or safety of any student or other individual, the Title IX Coordinator may remove the respondent from the district's education program or activity, or place the respondent on administrative leave on an emergency basis, with or without a grievance process pending. The decision whether to remove the respondent on an emergency basis may be made at any time during the grievance process, but must only be made after an individualized, fact-based safety and risk analysis. An emergency removal decision may not be based on general assumptions about sex, or research that purports to profile characteristics of sex offense perpetrators, or statistical data about the frequency or infrequency of false or unfounded sexual misconduct allegations. Emergency removal decisions must comply with applicable state law regarding suspensions, and applicable state and federal law and board policies regarding removal of students with disabilities.

The Title IX Coordinator shall promptly provide notice of the emergency removal decision to the respondent explaining the reasons for the removal decision. The respondent shall have the opportunity to challenge the removal decision of the Title IX Coordinator to the

Building Principal or other designated decision-maker, whose decision regarding removal shall be final.

Administrative Leave for the Respondent Employee
In the event the respondent is an employee (teacher, administrator, or ancillary staff), the Superintendent is authorized to place the respondent on administrative leave during the pendency of the grievance procedure, and the Superintendent identifies a need to temporarily remove the employee from their duties and/or job placement to protect district property, school operations, students and/or other employees. If the respondent is the Superintendent or Business Manager, the Board President is authorized to place the Superintendent or Business Manager on administrative leave.

The duration of administrative leave shall be until the investigation is complete and the Superintendent determines that the employee's potential threat or disruption to district property, school operations, students and/or other employees has passed.

Prior to placing an employee on administrative leave, the Superintendent may consider if a transfer or reassignment of the employee would be an appropriate alternative to administrative leave. A decision to transfer or reassign an employee shall not violate the terms of the employee's contract with the District or negotiated agreement, if applicable.

For certified or contract employees, administrative leave shall be with pay, and the employee shall not be required to take any applicable paid leave benefits as part of the administrative leave. For ancillary staff, administrative leave may be without pay and the employee may be permitted to take paid leave if available under the applicable leave policies.

Filing of Formal Complaint
A formal complaint regarding sex-based discrimination may be filed by the complainant or by the complainant's parent, guardian, or other authorized legal representative. A formal complaint may be filed with the Title IX Coordinator in person, by mail, by email, or by any online submission system provided by the District. The complainant does not need to be the target of the alleged discriminatory conduct to file a formal complaint; however, at the time of filing a formal complaint, the complainant must be participating in or attempting to participate in an education program or activity of the District. A formal complaint may not be filed anonymously by a complainant.

The Title IX Coordinator is authorized to exercise discretion to consolidate formal complaints when allegations of sex-based discrimination arise out of the same facts or circumstances, except if consolidation will violate the Family Educational Rights and Privacy Act (FERPA).

In the absence of a complaint or the withdrawal of any or all of the allegations in a complaint, and in the absence or termination of an informal resolution process), the Title IX Coordinator must determine whether to initiate a complaint of sex discrimination as required under Title IX. Before initiating a formal complaint, the Title IX Coordinator must make a fact-specific determination by considering, at a minimum, the following factors:

1. The complainant's request not to proceed with initiation of a complaint;
2. The complainant's reasonable safety concerns regarding initiation of a complaint;
3. The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
4. The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
5. The age and relationship of the parties, including whether the respondent is an employee of the District;
6. The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
7. The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and
8. Whether the District could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures.

If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other person, or that the conduct as alleged prevents the District from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a complaint.

If the Title IX Coordinator initiates a complaint, they must notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others. Regardless of whether a complaint is initiated, the Title IX Coordinator must identify and take other appropriate prompt and effective steps, in addition to steps necessary to effectuate the remedies provided to an individual complainant, if any, to ensure that sex discrimination does not continue or recur within the district's education program or activity.

Written Notice of Allegations

Upon receipt or signing of a formal sex-based discrimination complaint, the Title IX Coordinator will provide written notice of the allegations to the complainant and to the respondent. The written notice must:

1. Advise the parties of the district's grievance process;
2. Identify by name the known parties involved in the alleged misconduct, including the complainant and the respondent;
3. Include known details of the misconduct that potentially constitutes sex-based discrimination alleged against the respondent, including the date(s) and location(s) of the alleged conduct;

4. Advise the parties of any informal resolution procedure, including the circumstances under which such procedure is available, and the right of either party to end the informal process at any time and begin the formal resolution procedure; and,
5. Advise the parties of their right to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint.

The Title IX Coordinator may use age-appropriate measures in choosing how to convey the information required to be included in the written notice. In the event allegations in the formal complaint change or additional potential violations are discovered, the Title IX Coordinator must promptly provide written notice of the changes or additional potential violations to the complainant and the respondent.

Informal and Formal Resolution Timeframes
The District is required to follow the formal resolution procedure when a formal complaint containing allegations of sex-based discrimination is filed. Before proceeding with the formal resolution process, or whenever the District has information about conduct that reasonably may constitute sex discrimination, the District may offer the informal resolution procedure to the complainant and the respondent when deemed appropriate and only when both parties voluntarily agree in writing to attempt the informal resolution procedure. The informal resolution procedure may not be offered to resolve allegations that an employee engaged in sex-based discrimination of an elementary school or secondary school student or if such a process would conflict with the Federal, State or local law. The District may decline to offer informal resolution despite one or more of the parties' wishes.

The informal resolution procedure must be completed within 30 days of the receipt or signing of a formal complaint by the Title IX Coordinator, unless the Title IX Coordinator documents good cause for a temporary or limited delay and communicates the cause for the delay to the complainant and the respondent.

The formal resolution procedure, including any appeal process, must be completed within 60 calendar days of the receipt or signing of a formal complaint by the Title IX Coordinator or a complainant or a respondent terminating the informal resolution procedure, unless the Title IX Coordinator documents good cause for a temporary or limited delay and communicates the cause for the delay to the complainant and the respondent.

Good cause for a temporary or limited delay in the completion of the informal resolution procedure or the formal resolution procedure may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

The District recognizes that conduct that constitutes sex-based discrimination may also constitute child abuse, sexual abuse, or other crimes resulting in law enforcement investigations. In such situations and when good cause exists, the Title IX resolution procedures may be temporarily delayed in order to coordinate or cooperate with a

concurrent law enforcement investigation. The existence of a concurrent law enforcement investigation does not relieve the District of its obligation to respond to reports or complaints of sex-based discrimination as provided by Title IX and applicable regulations.

Prohibition on Meeting with the Respondent
At no time during the informal or formal resolution process shall the complainant be required to meet in person, be confronted by, or speak directly with the respondent.

Informal Resolution Procedure
This procedure may be used when the Title IX Coordinator deems it appropriate under the circumstances, and the complainant and respondent voluntarily consent in writing to participate in the informal resolution procedure. This procedure may not be used when the complainant is a student and the respondent is a district employee. Participation in the informal resolution procedure may not be a condition of enrollment or employment, or enjoyment of any other right. The informal resolution procedure may be facilitated at any time prior to reaching a determination regarding responsibility under the formal resolution procedure. The formal resolution procedure must be used whenever the informal procedure is not permitted or deemed appropriate.

Prior to commencing the informal resolution process, the Title IX Coordinator or other designated facilitator shall inform the parties of the informal resolution parameters, the potential consequences of participation in the process (e.g., no formal investigation undertaken, no admission of responsibility), and any confidentiality implications.

Upon commencement of the informal resolution process, the Title IX Coordinator or other designated facilitator shall gather information necessary to understand the allegations set forth in the formal complaint and to facilitate the informal resolution process. Based on this information-gathering process, the Title IX Coordinator or other designated facilitator shall propose to the parties an informal resolution process, which may include, but is not limited to:

1. Participation by the parties in mediation or other alternative dispute resolution procedure facilitated by the Title IX Coordinator, other designated facilitator, or third-party mutually agreed upon by the parties;
2. Holding a meeting (or series of meetings) with the parties and their advisors (provided all parties consent to participation) to discuss a potential resolution;
3. Development by Title IX Coordinator or other designated facilitator of written behavior expectations of the respondent to redirect conduct; or
4. Arranging a documented meeting with the respondent that involves a discussion of the sex discrimination and sex-based harassment policies and requirements for compliance.

The informal resolution process may result in agreements made between the parties, facilitated by the Title IX Coordinator or other designated facilitator, that result in the provision or continuation of supportive measures, as well as disciplinary or punitive

measures. These agreements may contain confidentiality requirements. Disciplinary or punitive measures may include, but are not limited to:

1. Requiring the respondent to undergo training on harassment;
2. Requiring the respondent to undergo counseling;
3. Recommend alternative placement or transfer of the respondent to different class(es), building, or campus;
4. Instituting protection mechanisms for the complainant (e.g., no-contact order, security escort, safety plan);
5. Creation of behavioral adjustment plan for the respondent;
6. In-school or out-of-school suspension for a respondent student;
7. Expulsion of a respondent student for a period not to exceed the remainder of the current school year provided the respondent and the respondent's parent(s)/legal guardian(s) consent and waive any applicable due process rights in writing;
8. Written reprimand placed in a respondent employee's personnel file; or
9. Termination of employment for a respondent employee provided the respondent employee consents and waives any applicable due process or continuing contract rights in writing.

The Title IX Coordinator shall monitor the implementation and effectiveness of the informal resolution and initiate the formal resolution procedure if the alleged harassment or discrimination persists.

Both the complainant and the respondent have the right to terminate or withdraw from the informal resolution procedure and resume the formal resolution procedure at any time prior to agreeing to a resolution.

Formal Resolution Procedure

This procedure must be used whenever the informal resolution procedure is not used or is terminated before resolution. The **Title IX Coordinator** or other designated investigator shall conduct an adequate, reliable, and impartial investigation of the allegations of sex-based discrimination set forth in a formal complaint. If the **Title IX Coordinator** or other designated investigator is the respondent, acted as the informal resolution facilitator, or has a conflict or is biased in such a manner that may prevent a fair and impartial investigation, the **Building Principal** shall designate another appropriate person to conduct the investigation.

The fact-gathering portion of the investigation must be carried out or overseen by the **Title IX Coordinator** or other designated investigator and may consist of interviews with the complainant, the respondent, and any others who may have witnessed or otherwise have knowledge of the circumstances giving rise to the allegations in the complaint and may involve gathering and review of other information relevant to the complaint. Questions and evidence about the complainant's sexual behavior or predisposition must be deemed irrelevant, unless offered to prove 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 Title IX Coordinator or other designated investigator will investigate formal complaints in a manner that:

1. Keeps the burden of proof and burden of gathering evidence on the District while protecting every party's right to consent to the use of the party's own medical, psychological, and similar treatment records;
2. Provides the parties equal opportunity to present facts and expert witnesses and other inculpatory and exculpatory evidence before any determination regarding responsibility is made;
3. Provides equal opportunity for parties to access relevant and not otherwise impermissible evidence or an accurate description of this evidence- and if the District provides a description, the parties may request and then receive access to the relevant and not otherwise impermissible evidence;
4. Provides both parties a reasonable opportunity to respond to the evidence or the accurate description of the evidence;
5. Provides reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.; and
6. Protects the privacy of the parties and witnesses.

The Title IX Coordinator or other designated investigator must recognize a presumption of non-responsibility on the part of the respondent until conclusion of the investigation. The investigation must be completed as soon as reasonably practical and in line with the deadlines for completion of the formal resolution procedure as set forth herein.

The Title IX Coordinator must exclude the following types of evidence, and questions seeking that evidence, as impermissible (i.e., must not be accessed or considered, except by the District to determine whether an exception in paragraphs 1 through 3 applies; must not be disclosed; and must not otherwise be used), regardless of whether they are relevant:

1. Evidence that is protected under a privilege as 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;
2. 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 the District's grievance procedures; and
3. 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.

Standard of Evidence
The District designates the preponderance of the evidence standard for use in all formal complaints of sex-based discrimination, including formal complaints against students and formal complaints against employees. To meet this standard, the decision-maker must determine that conduct constituting sex-based discrimination in violation of Title IX more likely than not occurred.

Determination of Responsibility by Decision-Maker[1]
The **Title IX Coordinator** or other designated decision-maker shall reach a determination regarding responsibility by applying the preponderance of the evidence standard.

In reaching a determination on responsibility, the **Title IX Coordinator** or other designated decision-maker must objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence. In doing so, the **Title IX Coordinator** or other designated decision-maker may 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-based discrimination. Corroborating evidence is not required to reach a determination of responsibility on the part of the respondent.

If the **Title IX Coordinator** or other designated decision-maker is not persuaded under the applicable standard by the evidence that sex-based discrimination occurred, whatever the quantity of the evidence is, the decision-maker will not determine that sex-based discrimination occurred.

If the **Title IX Coordinator** or other designated decision-maker determines the respondent engaged in sex-based discrimination in violation of Title IX[2], the **Title IX Coordinator** or other designated decision-maker must determine whether disciplinary or punitive sanctions against the respondent are warranted, and if so, what those sanctions should be. Disciplinary or punitive measures may include, but are not limited to:

1. Requiring the respondent to undergo training on harassment;
2. Requiring the respondent to undergo counseling;
3. Recommend alternative placement or transfer of the respondent to different class(es), building, or campus;

[1] As long as the District ensures there is no conflict of interest or bias, a decision-maker may be the same person as the Title IX Coordinator or investigator.
[2] The decision-maker may not impose any disciplinary sanctions against a respondent until the grievance procedures are completed.

4. Instituting protection mechanisms for the complainant (e.g., no-contact order, security escort, safety plan);
5. Creation of behavioral adjustment plan for the respondent;
6. In-school or out-of-school suspension for a respondent student;
7. Recommendation for expulsion of a respondent student in accordance with policy FFK;
8. Written reprimand placed in a respondent employee's personnel file; or
9. Termination of employment for a respondent employee in accordance with board policy, law, and when applicable, the negotiated agreement.

In making a decision regarding disciplinary or punitive measures[3], the **Title IX Coordinator** or other designated decision-maker may consider the following criteria:
1. Ages of the parties involved;
2. Relationship between the parties involved;
3. Severity of the conduct;
4. How often the conduct occurred, if applicable, and
5. How the District resolved similar complaints, if any, in the past.

Upon making a determination of responsibility, the **Title IX Coordinator** or other designated decision-maker must also determine any appropriate remedies to be offered to the complainant to restore or preserve the complainant's equal access to the district's education programs or activities. Such remedies may include supportive measures and need not be non-disciplinary or non-punitive in nature and need not avoid burdening the respondent.

Notice of Determination of Responsibility
The **Title IX Coordinator** or other designated decision-maker shall provide written notice of the determination of responsibility to the complainant and the respondent simultaneously. The notice of determination must include:
1. The decision-maker's rationale for the result and
2. Any disciplinary sanctions the District will impose on the respondent.

The notice of determination must not describe the individualized remedies to be provided to the complainant. The Title IX Coordinator shall communicate such remedies separately to the complainant to discuss what remedies are appropriately designed to preserve or restore the complainant's equal access to the district's education programs or activities. The Title IX Coordinator shall create a monitoring plan to evaluate the effectiveness of the disciplinary sanctions, remedies and/or supportive measures identified in the determination of responsibility to help prevent continuance or recurrence within the education program or activity.

[3] The decision-maker may not discipline a party, witness, or other participant for making a false statement or for engaging in consensual sexual conduct based solely on the determination of whether sex discrimination occurred.

Until the determination of responsibility is final, the District must refrain from acting on the determination of responsibility while maintaining the status quo through supportive measures designed to ensure equal access to the District's education programs or activities.

The Title IX Coordinator is responsible for effective implementation of remedies and the complainant may work with the Title IX Coordinator to select and effectively implement remedies designed to restore or preserve the complainant's equal access to the district's education programs or activities.

Dismissal of Complaint

The District may dismiss a formal complaint or allegations therein if:

1. The District is unable to identify the respondent after taking reasonable steps to do so;
2. The respondent is not participating in the district's education program or activity or is not employed by the District;
3. The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate the 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-based discrimination under Title IX even if proven; or
4. The District determines the conduct alleged in the complaint, even if proven, would not constitute sex-based discrimination under Title IX. Before dismissing the complaint on this basis, the District will make reasonable efforts to clarify the allegations with the complainant.

The Title IX Coordinator must provide written notice of any dismissal decision to the complainant and the respondent simultaneously. The dismissal notice must state the reasons for dismissal and explain the parties' right to appeal the decision in accordance with the procedure set forth herein.

When a complaint is dismissed, the District will, at a minimum:

1. Offer supportive measures to the complainant as appropriate;
2. If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and,
3. 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.

Appeal Procedure[4]

[4] The decision-maker on appeal must not be the Title IX Coordinator, the investigator, or the decision-maker dismissal decision. Regarding an appeal of a determination of responsibility, the Title IX regulations require a recipient to offer an appeal process that, at a minimum, is the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints. If a recipient does not offer an appeal process for determinations, it may opt to omit a section on appeals of determinations from its published grievance procedures.

The complainant and the respondent may appeal any dismissal of a formal complaint or allegation contained in a formal complaint. An appeal must be based on the existence of one or more of the following:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available when the determination of responsibility or dismissal decision was made that could affect the outcome of the matter; or
3. 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 affected the outcome of the matter.

An appeal must be submitted in writing to the **Building Principal** within **10 calendar** days after receipt of the notice of dismissal, and must identify the base(s) on which the appeal is being filed. Upon receipt of an appeal, the **Building Principal** shall:

1. Notify the parties of any appeal, including notice of the allegations, 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. Ensure that the decision maker for the appeal has been trained consistent with the Title IX regulations;
5. Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
6. Notify the parties of the result of the appeal and the rationale for the result.

The dismissal decision becomes final after the time period to file an appeal has expired, or if a party does file an appeal, after notice of the appeal decision has been sent to the parties.

Nothing herein shall prevent the parties from seeking available judicial redress through a court of competent jurisdiction or through any applicable state or federal complaint procedures.

Training Requirements

All district employees must be trained on the district's obligation to address sex-based discrimination in its education program or activity, and the scope of conduct that constitutes sex-based discrimination under Title IX, including the definition of sex-based harassment. The Title IX Coordinator, investigator, decision-makers, and other persons responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures, shall receive training on the following additional topics:

1. The informal and formal grievance procedures set forth herein;
2. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;

3. The meaning and application of the term “relevant” in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance;
4. How to conduct an investigation and grievance process including appeals and informal resolution processes, as applicable;
5. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, or bias.

Facilitators of any available informal resolution process must be trained on the rules and practices associated with the district's informal resolution process and on how to serve impartially, including by avoiding conflicts of interest and bias.

The District shall publish on the district website all current, up-to-date materials used to train Title IX personnel. If the District does not maintain a website, such materials shall be made available for public inspection upon request.

Records Retention

The District shall maintain all records of each sex-based discrimination report or complaint, regardless of later dismissal or other resolution of the allegation(s), for no less than seven years from the date of the record’s creation. This includes records relating to investigations, disciplinary sanctions, remedies, appeals, and informal resolutions. Such records include, but are not necessarily limited to, formal complaints, notes, notices, statements, reports, and audio or audiovisual recordings or transcripts, as well as training materials used to train Title IX personnel as required by Title IX.

End of Hope-Page School Board Reg. AAC-BR2……Adopted: 07/24