

## Title IX Sexual Discrimination / Sexual Harassment (Students and Employees)

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<b>Level:</b> <b>Policy</b> G-Personnel	<b>Accompanying</b> Procedure:	<b>Descriptor Code:</b> <b>GAEB/JCAC</b>	<b>Rescinds</b> NEW
<b>Descriptor Term:</b> <b>Title IX Sexual Discrimination / Sexual Harassment</b> <b>(Students and Employees)</b>		<b>Effective Date:</b> <b>August 15, 2024</b>	<b>Date Last Reviewed</b> <b>August 15, 2024</b>

### **SECTION 1 – POLICY**

The Gwinnett County Board of Education (“Board”) is committed to providing a school environment free of any form of sex discrimination and sexual harassment. The Board recognizes that it is important to provide our students an educational environment and our employees a work environment that is safe and secure. Gwinnett County Public Schools (“GCPS”) will respond promptly, and in a manner that is not deliberately indifferent, when it has been provided actual knowledge of any act that is prohibited by Title IX of the Education Amendments of 1972 (“Title IX”) and this Policy by a person within the United States, who is a student, employee, or third party. GCPS will diligently investigate formal complaints covered under sex discrimination and sexual harassment. As academic success is maximized while studying in an environment that is conducive to the learning process, sex discrimination and sexual harassment will not be tolerated.

Also, this Title IX Sex Discrimination/Sexual Harassment (Students and Employees) Policy (“Policy”) prohibits retaliation against any individual who, in good faith, submits a complaint under this Policy (including individuals who are third-party reporters), participates in an investigation as a complainant, respondent, reporter, witness, investigator, decision-maker (including appeal decision-maker), advocates for rights protected by Title IX and discrimination in employment based on sex, or protests alleged conduct that is prohibited by this Policy.

Complaints and/or reports of misconduct that fall outside the scope of this Policy, including discrimination or harassment that does not meet the definitions of sex discrimination and sexual harassment prohibited by Title IX and this Policy, should be addressed under other applicable Board policies, student conduct policies, personnel policies, or laws.

### **SECTION 2 – REASON FOR THE POLICY**

Gwinnett County Public Schools is required to comply with Title IX of the Education Amendments of 1972, which protects both students and employees from discrimination based on sex. Specifically, Title IX establishes that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Title IX of the Education Amendments of 1972.

### **SECTION 3 – APPLICABILITY**

This Policy applies to all members of the Gwinnett County Public Schools District to include students, teachers, school administrators, staff, district leaders, school resource officers, counselors, the Board, and members of the community who have any affiliation with GCPS.

### **SECTION 4 – EFFECTIVE DATE**

Gwinnett County Public Schools Title IX Sex Discrimination/Sexual Harassment (Students and Employees) Policy and Procedures applies to all reports and formal complaints of alleged misconduct that is submitted to the Title IX Coordinator, Assistant Title IX Coordinator, and/or an Employee Relations Director on or after May 16, 2024. Submitted complaints, prior to

May 16, 2024, that have not been resolved will be investigated and adjudicated under the Board's previous policy.

## **SECTION 5 – NON-DISCRIMINATION IN APPLICATION**

This Policy's requirements and protections apply equally to every student/employee regardless of their race, age, ethnicity, religion, national origin, sex, disability status, veteran status, or any other protected class covered by federal and state laws. All requirements and protections are also provided equitably to individuals regardless of their status as a complainant, respondent, witness, or advisor. Any individual who wishes to file a complaint under this Policy, may do so by contacting the Division of Human Resources, Office of Employee Relations/Title IX, the local school Assistant Title IX Coordinator, or the District Title IX Compliance Office.

## **SECTION 6 – SEXUAL HARASSMENT GRIEVANCE PROCEDURES**

### **I. Introduction**

Pursuant to Title IX of the Education Amendments of 1972, Gwinnett County Public Schools will ensure that it responds promptly, and in a manner that is not deliberately indifferent, when GCPS has been given actual knowledge of prohibited conduct that falls under the scope of this Policy, including sexual harassment, sexual assault, dating violence, domestic violence, and stalking that occurs in a GCPS education program or activity against a person within the United States, and the conduct is committed by a current student, employee, or third-party.

In addition, retaliation in any form is strictly prohibited by this Policy. The Policy protects against retaliation towards any individual, who in good faith:

- submits a complaint under this Policy (including individuals who are third-party reporters);
- participates in an investigation as a complainant, respondent, reporter, witness, investigator, decision-maker (including appeal decision-maker); or
- advocates for rights protected by Title IX, against discrimination in employment based on sex, or protests alleged conduct that is prohibited by this Policy.

### **A. Definitions**

1. Sexual Harassment - means conduct on the basis of sex that satisfies one or more of the following:

- (a) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (c) Other conduct, specifically:
  - Sexual assault 20 U.S.C. 1092(f)(6)(A)(v) and the Uniform Crime Reporting System of the Federal Bureau of Investigation (FBI). - defined as "any sexual act including rape, sodomy, sexual assault with an object, or fondling directed against another person, without the

consent of the victim, including instances where the victim is incapable of giving consent; also unlawful sexual intercourse, which includes statutory rape and incest”; or

- Dating violence 34 U.S.C. 12291(a)(11) - defined as “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: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship”; or

- Domestic violence 34 U.S.C. 12291(a)(12) - defined as when violence occurs “by a person who- (A) is a current or former spouse or intimate partner of the victim, or 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

- Stalking 34 U.S.C. 12291(a)(36) - defined as “engaging in a course of conduct directed at a specific person that would cause a reasonable person to- (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.”

2. Education program or activity – includes all locations and events for students, conduct within the workplace or in the performance of an employee’s duties, or circumstances to which GCPS exerts substantial control over the accused/respondent and:

- any facility, property, or building owned, leased, or controlled by GCPS; or
- any off-site areas, conferences, field trips where GCPS has substantial control; or
- any activity that occurs on computer or telephone, digital platforms, internet networks, and computer software/hardware that is operated or owned by GCPS or that GCPS has substantial control.

3. Consent – must be clear communication and mutual agreement to engage in the conduct to which the participants are involved.

- Consent cannot be gained by the use of force, coercion, duress, manipulation, threats of violence, or intimidating behavior.
- An incapacitated person is unable to give consent. Incapacitation may result from sleep, unconsciousness, influence of drugs or alcohol, or a physical or mental impairment. This list is not exhaustive. When determining incapacitation, one must consider the person's ability to understand the circumstances surrounding them, the ability to make informed and rational judgments, or the ability to consent or not consent to the act.

4. Actual Knowledge – when notice of sexual harassment, including allegations of sexual harassment, has been given to any GCPS employee, Assistant Title IX Coordinator, Title IX Coordinator, Director of District Title IX Compliance, or Employee Relations Director.

Actual knowledge includes reports of sexual harassment from a victim or third-party. GCPS will not be deemed to have actual knowledge of allegations based on the respondent's knowledge, even where the respondent is an employee.

5. Assistant Title IX Coordinator – local school assistant principal who serves in the capacity as a coordinator of the Title IX process within the local school.
6. Formal Complaint – a signed written statement from the victim that is received by hard copy or by electronic format that outlines conduct that is allegedly prohibited by this Policy. The district's Title IX Coordinator may also bring forth a formal complaint, without the consent of the victim, if in the best interest of GCPS to do so.
7. Complainant – an individual alleged to be the victim of sex discrimination and/or sexual harassment.
8. Respondent - an individual who has been reported of engaging in conduct that would violate this Policy.
9. Reporter – an individual who is not the victim and makes the report of sexual harassment based on what they observed or heard. A victim is not required to make the report of allegations of sexual harassment for Gwinnett County Public Schools to act under Title IX or this Policy.
10. Inculpatory Evidence – information/evidence that tends to prove an allegation.
11. Exculpatory Evidence - information/evidence that tends to disprove an allegation.
12. Responsible Employee – includes GCPS teachers, administrators, supervisors, district leaders, school resource officers, counselors, and all other staff who must report any sex discrimination or sexual harassment complaints they receive or have knowledge of (whether direct or indirect) that is prohibited under Title IX and this Policy.

#### **B. Role of District Title IX Coordinator and Director of District Title IX Compliance**

Gwinnett County Public Schools has a coordinator who serves as the District Title IX Coordinator and ensures the administration of this Policy is conducted in a neutral and equitable manner for all students and employees. In addition, every elementary, middle, and high school has an appointed local Assistant Title IX Coordinator within the school building.

The Director of District Title IX Compliance is responsible for developing, implementing, coordinating, and conducting educational programs and initiatives designed to educate and support stakeholders regarding their rights and, where applicable, obligations under Title IX, including reporting options/responsibilities, support services, district policy and applicable disciplinary code, grievance procedures, confidential resources, etc.

#### **C. Training**

The Director of District Title IX Compliance is responsible for taking steps reasonably calculated to ensure all investigators, coordinators, decision makers, and those involved with processing Title IX complaints are adequately trained in compliance with Title IX guidance.

#### **D. Role of a Responsible Employee**

All Gwinnett County Public School employees are considered “responsible employees.”

Responsible employees are those employees who have authorization to address and remedy sex discrimination and sexual harassment and/or have a responsibility to report sex discrimination and sexual harassment to their supervisor, principal, local Assistant Title IX Coordinator, Employee Relations, Title IX Compliance Office, or other designated officials.

Title IX requires responsible employees to provide all information regarding the sex discrimination and sexual harassment when reporting allegations, to include the identity of the involved individuals (victim and accused if known) and the date, time, and location of the alleged misconduct. A responsible employee **must not** promise that they will keep Title IX allegations confidential. Responsible employees have an immediate duty to report such allegations.

#### **E. Rights of the Parties**

Gwinnett County Public Schools is committed to ensuring school and work environments that provide fair, prompt, and thorough investigations when formal complaints have been filed under this Policy. Additionally, GCPS will ensure that both Complainant and Respondent will be provided the following rights:

1. Reasonable accommodations when a student or employee asks for an accommodation under the Americans with Disabilities Act.
2. Thorough and prompt investigation of allegations/reports sex discrimination and sexual harassment under Title IX.
3. Access to evidence, to include texts, emails, pictures, written documents, and other information used during the investigation that is directly related to the allegations raised in the formal complaint.
4. Responsive action should an individual raise an allegation of bullying, harassment, intimidation, or any type of retaliation during or after the resolution of the process.

#### **F. Conflicts of Interest or Bias**

Anyone participating as an Assistant Title IX Coordinator, Investigator, Initial Decision-maker, and Appeals Decision-maker in a formal process or anyone serving as a Facilitator in an informal process, must disclose all potential or actual conflicts of interests or biases towards any participating party. If anyone believes that someone participating in the process has a conflict or bias, they should notify the District Title IX Coordinator within two (2) school days for students and two (2) working days for employees in writing and request the individual be removed from participating in the process. Included in the request, there must be an outline of what the issue is and why a conflict or bias exists. If the District Title IX Coordinator makes a determination that in fact, a conflict or bias exists, the individual will be removed from participation in the process. If a request for removal of the District Title IX Coordinator is made due to bias or conflict, it should be made within two (2) school days for students and two (2) working days for employees to the Director of District Title IX Compliance.

#### **G. Receipt of Information**

Upon receipt of a report of sexual harassment, if the victim was a child at the time of the alleged sexual harassment at the outset of the report, immediately and in no case more than 24 hours, the local Assistant Title IX Coordinator, administrator, or Employee Relations Director **must** notify the Georgia Division of Family & Children Services (“DFCS”). The

receiver of the report should not wait or delay the report to DFCS until an investigation is completed. If information on abuse arises during an investigation, the investigator or administrator involved must notify DFCS immediately and within 24 hours.

DFCS should be notified of all incidents in which there is reasonable cause to believe that child abuse had occurred, including, but not limited to the following instances:

1. Intentional contact with another person's private area;
2. Intentional nudity/exposure of private area(s) to another person(s); or
3. Alleged misconduct is unique to the student's age and suggests abuse.

In addition, the School Resource Officer ("SRO") must be notified when the allegation involves any type of child abuse, sexual assault, dating violence, or stalking.

#### **H. Reporting to the Office of Employee Relations /Title IX**

All local Assistant Title IX Coordinators must notify the Division of Human Resources, Office of Employee Relations/Title IX of any report or allegation of sexual harassment. Each cluster has an assigned Employee Relations Director to whom the notification must be made within 24 hours. In addition, the local Assistant Title IX Coordinator must open a case file within the Title IX Case Management System ("CMS") within 48 hours of receiving a report or allegation of sexual harassment. The local Assistant Title IX Coordinator must not wait until the investigation or case is completed to enter the initial report/case into the CMS. This will allow the District Title IX Coordinator, Employee Relations Director, and Director of District Title IX Compliance to monitor cases and ensure the process moves forward appropriately.

#### **I. Title IX Applicability**

Following a report or allegation of sexual harassment, the local Assistant Title IX Coordinator and/or Employee Relations Director must **first** make a determination if Title IX is applicable. The report or allegation falls under Title IX, if the conduct described would be a Title IX violation if the facts of the case were considered true. A non-Title IX case does not absolve an administrator, local Assistant Title IX Coordinator, or Employee Relations Director from reporting alleged child abuse to the Georgia Division of Family & Children Services within 24 hours. If the alleged conduct is also in violation of the Georgia Code of Ethics for Educators, a report of the breach of one or more of the Standards within the Code of Ethics must be reported to the Georgia Professional Standards Commission.

Discussions or impositions of discipline must not occur prior to the completion of the Title IX process until a determination of responsibility has been made. Also, informal resolution discussions **must not** occur prior to the filing of a formal Title IX complaint.

If a determination is made that a report or allegation does not fall under Title IX, the case may be reviewed and processed under other applicable Board, personnel, or student policies, federal and/or state laws, or professional ethic standards.

#### **J. Case Processing**

Based on the whether the victim and accused is a student, employee, or third-party, the Title IX case will be processed in the following manner:

1. Student against Student – For cases where the victim and accused are both students, the local Assistant Title IX Coordinator and Title IX Investigator will administer the Title IX Grievance Procedure/Process.

2. Student against Employee/Third-Party – For cases where the victim is a student and the accused is an employee or third-party, the Employee Relations Director will administer the Title IX Grievance Procedure/Process. The Employee Relations Director may receive assistance from the local Title IX Coordinator and Title IX Investigator as needed.

3. Employee against Employee/Third-Party - For cases where the victim and accused are both employees or the accused is a third-party, the Employee Relations Director will administer the Title IX Grievance Procedure/Process.

In some instances, the Division of Human Resources, Office of Employee Relations/Title IX, the District Title IX Coordinator, the Director of District Title IX Compliance, or the Chief Human Resources Officer (“CHRO”) may make a determination that a case may need to be processed in a different manner or by an outside vendor.

## **II. Sexual Harassment Grievance Process**

### **A. Initial Intake Meeting**

After a determination of Title IX applicability, the local Assistant Title IX Coordinator or Employee Relations Director should send a Notice of Intake Meeting to the alleged victim. If the victim is a student, notice must also be sent to the student’s parents, even if the victim is a student who is eighteen (18) years or older. In addition, all notices must continue to be sent to the parents of student victims and accused individuals throughout the Title IX Grievance Process. This should occur, even if the student is eighteen (18) years or older.

During the Intake Meeting, the local Assistant Title IX Coordinator or Employee Relations Director must do the following:

1. Explain to the victim his/her rights under Title IX.
2. Explain the full Title IX process to the victim.
3. Assess and address any immediate safety concerns the victim may have.
4. Discuss and offer supportive measures to the victim.

In addition, the local Assistant Title IX Coordinator or Employee Relations Director must provide the victim a hard copy of Gwinnett County Public Schools Title IX Sex Discrimination/Sexual Harassment (Students and Employees) Policy and Procedures.

### **B. Non-Investigation Matters**

Before the filing of a formal complaint, the Assistant Title IX Coordinator and/or Employee Relations Director may need to provide the victim and the accused with supportive measures or process an emergency removal or administrative leave.

1. **Supportive measures** are non-disciplinary and non-punitive services that are

made on an individual basis and offered to the parties. These measures are created to preserve and/or restore equal access to education activities and/or programs, deter sexual harassment, and protect the safety of the parties, while not being unreasonably burdensome to the other party. These measures must be reasonably available and at no charge/cost/fee to either party. GCPS will maintain confidentiality as it relates to the supportive measures provided but may need to engage certain people for implementation. It is the responsibility of the Assistant Title IX Coordinator and/or Employee Relations Director to ensure supportive measures are appropriately implemented.

Supportive measures may include, but are not limited to the following:

- (a) Counseling
- (b) Extension of deadlines
- (c) Modification of work or class schedules
- (d) Schedule changes
- (e) Increased security or monitoring of parts of the school or work environment
- (f) Mutual restrictions on contact between the parties (such as a “no-contact order”)
- (g) Leaves of absence

2. **Change of school or administrative leave** may be implemented by Gwinnett County Public Schools. Students (either the victim or accused or both) may be placed in a different educational setting as deemed appropriate based on the facts of the case. The educational setting may not modify or change any rights a student may have under IDEA, Section 504, or ADA. However, there is nothing that precludes GCPS from placing an employee respondent on administrative leave during the Title IX Grievance Process, as long as it is in accordance with applicable laws, Board policies, and all other practices.

### **C. Formal Resolution by Filing a Formal Complaint**

In order to initiate the Title IX Grievance Process, a victim must submit a formal complaint in writing with their signature. Once a formal complaint is filed, the victim will be referred to as the “Complainant” and the accused referred to as the “Respondent.” The identity of the parties involved will remain confidential and only revealed to those who need to know to conduct their duties or carry out their responsibilities and/or to comply with any applicable policy or law. Parties’ identities may be shared with investigators, coordinators, GCPS executive administrators, witnesses, and those who may need to be involved to implement, sanctions, disciplinary actions, or supportive measures.

If a victim does not wish to file a formal complaint, the District Title IX Coordinator will make a determination if a formal complaint should be initiated by the Office of Employee Relations/Title IX. Factors to consider are:

- Whether there is independent evidence of the allegations other than the testimony of the victim.

- Whether the nature of the allegations rise to the level that the district should act on the allegations based on the risk to the school community.

- Whether there have been similar or other complaints involving the same accused/respondent.

Should the District Title IX Coordinator choose to file a formal complaint, the victim will be notified. However, the victim cannot be compelled to participate in the process as a witness but will still receive all procedural notices throughout the Title IX Grievance Process.

If allegations involve multiple complainants and respondents and the conduct rises out of the same facts or circumstances, GCPS may choose to consolidate the complaints and investigations.

#### **D. Notice of Allegations**

Once a formal complaint has been filed, the Assistant Title IX Coordinator and/or Employee Relations Director must provide the Respondent with a Notice of Allegations. Notice should occur within five (5) school days for students and five (5) working days for employees after receipt of a formal complaint. If there are extenuating circumstances, notice should be given as soon as possible.

All parties, including the parents of students involved with the matter, will be contacted by the email given to the Assistant Title IX Coordinator and/or Employee Relations Director. It will be the responsibility of each party to regularly check and respond to notices sent.

Once the Notice of Allegations has been sent, Respondent will be given adequate time to review the notice and provide a response back before any initial interviews take place.

After reviewing the formal complaint and sending the Notice of Allegations, the Assistant Title IX Coordinator and/or Employee Relations Director will make a determination whether all or part of the formal complaint **must** or **should** be dismissed based on the initial information submitted. If a determination is made to dismiss a part or all of the formal complaint, the Assistant Title IX Coordinator and/or Employee Relations Director will send all parties a Notice of Dismissal.

##### **1. Notice of Allegations**

The Notice of Allegations will include the following information:

- A copy of the GCPS Title IX Sex Discrimination/Sexual Harassment Policy and Procedures.
- The allegations that fall under sexual harassment to include sufficient information to allow the Assistant Title IX Coordinator and/or Employee Relations Director and Complainant and Respondent to prepare for the initial interviews. The allegations must include the names of the parties involved (including Complainant's name), the conduct that allegedly falls under sexual harassment, and the date, time, and location of where the conduct occurred.
- A statement that Respondent is presumed "not responsible" for the alleged conduct and no determinations will be made prior to the Decision-maker's determination as to "responsible" or "not responsible" at the end of the Title IX Grievance Process.

- A statement that Complainant and Respondent may choose an advisor to assist them through the Title IX Grievance Process, and that the advisor may be an attorney, but is not required to be an attorney.
- A statement, informing the Complainant and Respondent, that they have a right to discuss the allegations under investigation with others, gather and present evidence, and inspect and review all evidence gathered as part of the investigation that is directly related to the allegations raised in the formal complaint, including evidence that proves or disproves the allegations.
- A statement that Gwinnett County Public Schools strictly prohibits anyone knowingly and intentionally making a false report, stating false information, or providing altered/fake/false information during the Title IX Grievance Process.
- A list of possible student code or employee policy/ethical violations.

## 2. Updated Notices

During an investigation, additional allegations may arise that were not included in the initial Notice of Allegations. If this occurs, Assistant Title IX Coordinator or Employee Relations Director will update the Notice of Allegations to include the new allegations and send out to all parties. Adequate time will be given for the parties to review the new allegations and Respondent to prepare a response before interviews resume.

### E. Jurisdiction

Gwinnett County Public Schools has established jurisdiction over a Title IX matter when:

1. The alleged conduct occurred within the United States;
2. The alleged conduct occurred during a GCPS activity or program within the educational or employment scope; and
3. The alleged conduct would fall under sexual harassment as outlined under GCPS Policy.

### F. Formal Complaint Dismissals

If the Assistant Title IX Coordinator or Employee Relations Director makes a decision that a formal complaint should be dismissed, Assistant Title IX Coordinator or Employee Relations Director will expeditiously send a written Notice of Dismissal to all parties via their previously specified email address. The Notice of Dismissal must state the reason for the dismissal and provide parties with information on the process to appeal the dismissal.

1. **Mandatory dismissal** – A formal complaint **must** be dismissed if the one or more elements are not met under the Jurisdiction section (Section II(E)).

2. **Discretionary dismissal** – A formal complaint **may** be dismissed if:

- (a) Complainant notifies the Assistant Title IX Coordinator or Employee Relations Director, in writing, they wish to withdraw their formal complaint;
- (b) Respondent is no longer enrolled or employed by GCPS; or

(c) Circumstances arise that prevent GCPS from being able to gather sufficient evidence to make a determination on the formal complaint or the allegations within the formal complaint.

**3. Appeal of Dismissals** - Either party may appeal a mandatory or discretionary dismissal or a partial dismissal of allegations. Once a Notice of Dismissal has been sent, either party may file a written appeal within five (5) school days for students and five (5) working days for employees to an Appeals Officer within the Office of District Title IX Compliance, Human Resources or to a designee. The Appeals Officer would not have served as the role of Assistant Title IX Coordinator, Employee Relations Director, Title IX Investigator, or Title IX Initial Decision- maker in the same matter. The Appeals Officer must not have a bias or a conflict of interest in order to serve over the appeal.

An appeal of a dismissal may only be initiated if:

(a) The party filing the appeal shows that the Assistant Title IX Coordinator or Employee Relations Director, who issued the Notice of Dismissal, has exhibited some type of bias or that a conflict of interest exists; or

(b) The party filing the appeal shows the formal complaint does not fall under the scope of GCPS's policy.

The Title IX Appeal Officer will issue a decision within five (5) school days for students and five (5) working days for employees. The decision will be issued to all parties. Should there be a finding that there was a conflict or bias, a new Assistant Title IX Coordinator or Employee Relations Director will be assigned to handle the case and review the formal complaint.

If there is a determination by the Title IX Appeal Officer that the formal complaint does fall under the scope of GCPS's policy, the investigation will proceed forward.

#### **4. Investigation Under Other Policies**

If a case is dismissed under Title IX or a victim chooses not to move forward with a formal complaint, GCPS has the right to review the allegations and determine if other GCPS and/or state policies were violated and act accordingly.

### **G. Advisors**

Gwinnett County Public Schools does allow for parties to have an advisor to be with the participating party during the Title IX Grievance Process. However, advisors are not permitted to speak on behalf of the student, employee, or any party during the process.

#### **1. Advisors**

The parties may select anyone to be an advisor to assist them, with the exception of current employees of GCPS. The advisor can be an attorney, though it is not required. An advisor is allowed to attend initial interviews, investigatory interviews, and meetings with their respective party. However, the advisor is not permitted to speak for the party, unless circumstances under the ADA or due to a language barrier necessitates such. Prior authorization from the Assistant Title IX Coordinator or Employee Relations Director will be required.

## 2. **Advisors' Availability**

GCPS will make reasonable efforts to schedule interviews and meetings at a time an advisor is able to attend. GCPS has an obligation to promptly investigate and adjudicate Title IX allegations in a timely manner; therefore, GCPS will not grant delays solely due to an advisor's conflicting schedule. The Assistant Title IX Coordinator or Employee Relations Director will have latitude in determining what is considered "reasonable" under this Policy. However, no interview or meeting will be delayed past five (5) school days for students and five (5) working days for employees, unless there are extenuating circumstances.

### **H. Informal Resolution**

A party may not want to participate in a formal resolution process where an investigation occurs. With the exception of a student against employee or third-party allegation, parties may opt to go through an informal resolution process.

The informal resolution process is a voluntary process, where both Complainant and Respondent have to agree, in writing, to participate. The process is structured where the parties interact to come to an agreement and/or remedy. The goal is to find a remedy that balances accountability and support for both parties. The outcome should be designed to end the prohibited conduct, prevent any recurrence, and rectify the effects that helps Complainant move forward in a safe school and/or work environment.

Informal resolutions can be formed through various processes, to include, but not limited to educational programs, seminars, trainings, and workshops, one-to-one meetings, mediation, or restorative practices.

To engage in the informal resolution process, a formal complaint must have been filed by Complainant. Complainant may request an informal resolution process when they file the formal complaint. In addition, either party can request an informal resolution at any time during the Title IX Grievance Process, as long as it occurs **before** a decision is rendered. Once the request has been made by both parties, the investigation will be placed on hold. Again, both parties must agree, in writing, to an informal resolution process.

At any time during the informal resolution process, either party may request to end the informal resolution process and return to the formal complaint resolution process, which at that time, the investigation will move forward. GCPS reserves the right to end an informal resolution process if the Assistant Title IX Coordinator or Employee Relations Director believes the informal resolution process is no longer effective or either party is no longer a willing participant or engaging in the process.

If an informal resolution agreement is reached between the parties, the agreement must be written out and then reviewed and approved by the Assistant Title IX Coordinator, Employee Relations Director, or legal counsel to ensure the agreement falls within the scope of GCPS policies and/or state/federal laws. Once the informal resolution has been approved, the formal complaint resolution process will be closed, and both parties will receive written notice of the agreed upon resolution. If either party fails to comply with the outlined informal resolution agreement, a formal complaint investigation cannot be re-opened on the same facts. However, the non-compliant party may be in violation of other GCPS policies and/or state/federal laws and may still be sanctioned/disciplined under the applicable policy or law.

If an agreement cannot be reached with the informal resolution process, the Assistant Title IX Coordinator or Employee Relations Director will provide notice to both parties and move forward with the formal resolution process by conducting or resuming an investigation.

## **I. Procedures for Investigations**

### **1. Time Limits**

There is no timeframe as to when a victim must file a report of prohibited conduct under this Policy. However, a delayed report may prevent GCPS from being able to gather relevant evidence and information to effectively oversee the matter, due to how much time may have passed.

To initiate the Title IX Grievance Process, a formal complaint must be filed with an Assistant Title IX Coordinator or Employee Relations Director. The Title IX Grievance Process should be completed within a prompt timeframe.

GCPS will strive to ensure all complaints are reviewed and/or resolved in an equitable, fair, impartial, and timely manner. However, GCPS does recognize that there may be delays due to school or work closings, holiday breaks, concurrent law enforcement involvement, complexities of the allegations, number of involved parties, and other unforeseen circumstances.

If an allegation involves concurrent law enforcement involvement, although GCPS may slightly delay its process, it will not halt for the conclusion of any related criminal hearings/proceedings.

### **2. Requests for Extensions**

All participants who are students or employees of GCPS, to include the parties' advisors, are expected to make themselves available to participate in the Title IX Grievance Process during school hours for students and during the working day for employees.

If Complainant or Respondent requests an extension during the grievance process for good cause with reasonable notice, and it will not cause an undue burden on the other parties, the Assistant Title IX Coordinator, Title IX Investigator, or Employee Relations Director may grant such request. All requests must be in writing and the determination for granting or denying the extension, rest solely with the Assistant Title IX Coordinator, Title IX Investigator, and/or Employee Relations Director.

### **3. Guidelines for Investigations**

#### **(a) Responsibilities of the Title IX Coordinator and Title IX Investigator**

Each elementary, middle, and high school will have assigned local school administrators in the roles of Assistant Title IX Coordinators and Title IX Investigators for student against student allegations. Allegations involving student against employee or employee against employee will be investigated by the assigned Employee Relations Director within the Division of Human Resources, Office of Employee Relations/Title IX. If a formal complaint has been filed, the investigation must include interviews with Complainant,

Respondent, witnesses, as well as the gathering of information related to the complaint, to include but not limited to pictures, text messages, emails, phone logs, police reports, etc. The investigation must be conducted equitably, fairly, and with impartiality. In addition, the investigation should be thorough. The Assistant Title IX Coordinator and/or the Employee Relations Director will ensure that all parties are kept aware of the process, timelines, and notices of interviews or meetings.

**(b) Burden of Proof**

Gwinnett County Public Schools uses the evidentiary standard “preponderance of the evidence” as the level of burden of proof. Under this standard, the burden of proof is met when information provided shows there is a greater chance of over 50% that the allegations are true.

**(c) Evidence Collection**

The Title IX Investigator and Employee Relations Director is responsible for gathering and storing all information identified by the parties, as well as collecting any additional information related to the complaint. Any party has the right to decide not to participate in the Title IX Grievance Process. GCPS will not retaliate if a party chooses to not participate in a Title IX Grievance Process.

**(d) Access Restrictions**

The Title IX Investigator or Employee Relations Director may not have access to or disclose medical information without authorization from the party (or parent, where applicable) whose information it is.

**4. Notices – Investigation Interviews and Meetings**

Anyone who is considered a party to the Title IX Grievance Process will receive notice with sufficient time to prepare for the investigation, interview, or meeting. The notice will state the purpose and include the date, time, location, names of participants, and the ability to bring an advisor.

**5. Gathering, Reviewing, and Storing of Information Collected from the Parties**

The Title IX Investigator or Employee Relations Director must provide Complainant and Respondent equal opportunities to give witnesses’ names. However, the Title IX Investigator or Employee Relations Director may choose not to interview a witness, if the Title IX Investigator or Employee Relations Director reasonably believes that witness does not have relevant information to share regarding the allegations.

The Title IX Investigator or Employee Relations Director will allow parties and witnesses an equal opportunity to submit, any and all relevant information, including but not limited to communications, documents, emails, pictures, recordings, social media posts, text messages, and videos.

All information received will be stored in an appropriate manner. Before an investigation is completed, Complainant and Respondent will have an equal opportunity to review, as well as respond to the information submitted and collected that directly pertains to the allegations being investigated by the Title IX Investigator

or Employee Relations Director. Complainant and Respondent will need to submit all information to the Title IX Investigator or Employee Relations Director prior to the time where both parties may review evidence. Based on the circumstances, the Title IX Investigator or Employee Relations Director has sole discretion to determine the means in how Complainant and Respondent review the evidence.

Complainant and Respondent will have ten (10) days to review the evidence and provide the Title IX Investigator or Employee Relations Director with their written responses. If a written response is received, the Title IX Investigator or Employee Relations Director must consider the written response prior to the completion of the investigation. Each party's response will also be sent to the other party.

## **6. Reports**

The Title IX Investigator or Employee Relations Director will prepare an initial investigation report upon completing the investigation of the allegations. The report should be a summary of the relevant information only. Both inculpatory and exculpatory evidence should be included in the investigation report.

In addition, the investigation report should fairly summarize all relevant documentation received. If evidence is not relevant, it will not be included in the investigation report. However, it should be maintained as part as the case file and securely stored. The Title IX Investigator or Employee Relations Director should be aware and redact information that falls within relevant documents that may be irrelevant.

Each party and their advisor (if applicable) will receive a copy of the initial investigation report. Both Complainant and Respondent will have an equal opportunity to review the report and provide a written response back to the Title IX Investigator or Employee Relations Director. The written statement must be sent within ten (10) days. If received, the Title IX Investigator or Employee Relations Director will review the written response and make changes to the report, if information received necessitate changes. Once the Title IX Investigator or Employee Relations Director has reviewed written responses and made any changes (if needed), a final investigation report will be provided to Complainant, Respondent, their advisors, and the Title IX Decision-maker, along with each party's written response to the initial investigation report within ten (10) days.

## **J. Decisions**

At the local school level, the Principal will serve as the Title IX Decision-maker for student against student Title IX cases. With student against employee or employee against employee Title IX cases, a representative of Human Resources ("HR Representative") will serve as the Title IX Decision-maker.

The Principal or HR Representative must not have served as the Assistant Title IX Coordinator, Title IX Investigator, or an Advisor in the same case. The Title IX Decision-maker may not serve as the Title IX Appeal Officer of the same case. Title IX Decision-makers must not be biased or have a conflict of interest. If a party feels a decision-maker is biased or has a conflict, the party should notify the District Title IX Coordinator or Director of District Title IX Compliance within two (2) school days for students and two (2) working days for employees in writing and request the individual be removed from participating in the process. The request must outline what the issue is and why a conflict or bias exists. If the District Title IX Coordinator and/or the Director of District Title IX Compliance makes a determination that in fact a conflict or

bias exists, the individual will be removed from participation in the Title IX Grievance Process. If a request for removal of the District Title IX Coordinator is made due to bias or conflict, it should be made within two (2) school days for students and two (2) working days for employees to the Director of District Title IX Compliance.

Before a determination regarding responsibility is made, the Title IX Decision-maker must allow Complainant and Respondent an opportunity to submit written and relevant questions they want asked of the other party or a witness. Once responses are received, the Title IX Decision-maker must send a copy of the responses back to the asking party. Additional time should be allowed for limited follow-up questions from each party. However, the Title IX Decision-maker may exclude a question, if a determination is made that the question is not relevant. If the question is excluded, the decision-maker must inform the party that the question is not relevant and will not be asked.

#### **1. Before Determinations Are Made**

Before a determination regarding responsibility is made, the Title IX Decision-maker must allow Complainant and Respondent an opportunity to submit written and relevant questions they want asked of the other party or a witness. Once responses are received, the Title IX Decision-maker must send a copy of the responses back to the asking party. Additional time should be allowed for limited follow-up questions from each party. However, the Title IX Decision-maker may exclude a question, if a determination is made that the question is not relevant. If the question is excluded, the Title IX Decision-maker must inform the party that the question is not relevant and will not be asked.

#### **2. Standard of Proof**

Gwinnett County Public Schools (GCPS) uses the preponderance of evidence standard when making determinations regarding responsibility of formal complaints.

#### **3. Review of Evidence**

The Title IX Decision-maker should ensure he/she reviews first-hand information from parties and witnesses, inculpatory and exculpatory evidence, and third-party information.

#### **4. Prior Sexual Behavior or Predisposition**

Questions or evidence about Complainant's prior sexual behavior or sexual predisposition are **not** relevant, unless it falls within one of the categories below:

- a. Questions and evidence are being offered about Complainant's sexual behavior to prove another individual, and not Respondent, committed the conduct alleged by Complainant; **or**
- b. Questions and evidence of Complainant's prior sexual behavior concern specific incidents with Respondent and are offered to prove consent by Complainant.

#### **5. Determinations**

The Title IX Decision-maker must make a written determination that includes:

- (a) A statement of the allegations that potentially constitute sexual harassment;

- (b) A description of the procedural steps taken from when the formal complaint was filed to the decision, including notifications to parties, interviews, and how evidence was gathered;
- (c) The findings of fact that support the decision made;
- (d) The application of GCPS's policies in relation to the facts presented;
- (e) A statement of, and rationale for, the decision as to **each** allegation, including a determination regarding responsibility, and state the sanction/discipline given to Respondent, as well as state remedies that will be provided to Complainant that are designed to restore or preserve equal access to their education program or activity; and
- (f) A statement that Complainant or Respondent may appeal the decision and provide information on the Title IX Grievance Appeal Process and the permissible grounds for appealing.

## **6. Issuance of Decisions**

The Title IX Decision-maker must provide a copy of the written decision to both Complainant and Respondent simultaneously within five (5) school days for students and five (5) working days for employees, unless there are extenuating circumstances. If any remedies were stated in the written decision, the Assistant Title IX Coordinator or Employee Relations Director must ensure the remedies are effectively implemented.

If there is no appeal, the determination regarding responsibility becomes final on the day after a timely appeal could have been filed.

If a party chooses to appeal the determination regarding responsibility, the decision becomes final on the day the appeal written determination is issued to both parties.

## **K. Student Sanctions, Employee Disciplinary Actions, and Other Actions**

1. If sanctions need to be imposed, the Title IX Decision-maker must impose sanctions that are:

- (a) Appropriate and fair based on the facts of the case;
- (b) Consistent with Gwinnett County Public Schools processing of similar cases;
- (c) Adequate to protect the safety of local schools and the work environment;
- (d) Thoughtful of the severity of the conduct prohibited by Title IX; and
- (e) Compliant with both Title IX and Georgia law regarding disciplinary actions and hearings.

2. The Title IX Decision-maker must consult with the appropriate person/office who handles student sanctions and employee disciplinary actions. However, the Title IX Decision-maker must still make the decision on what is an appropriate sanction or disciplinary action to impose. Relevant factors to be considered are:

- (a) Facts and circumstances regarding the conduct at issue;
- (b) Nature of the prohibited conduct at issue;
- (c) Circumstances regarding the issue of consent;
- (d) State of mind during the prohibited conduct at issue;
- (e) Impact of the act on Complainant;
- (f) Prior disciplinary history of the Respondent;
- (g) Safety of Gwinnett County Public Schools and work environment;
- (h) Precedent that may have been established in previous cases; and
- (i) Any other facts in the case that may aggravate or mitigate the circumstances.

3. For student respondents, sanctions will be imposed as outlined in the Gwinnett County Public Schools, Student Conduct Behavior Code for Elementary, Middle, and High Schools. Sanctions will be imposed in accordance with the appropriate disciplinary processes outlined for students who may be suspended or expelled from school. Sanctions may include suspensions for up to ten (10) school days. Where suspension or expulsion beyond ten (10) school days is recommended, the student must be referred to a tribunal hearing.

4. For employee respondents, disciplinary actions may include written reprimands, suspensions, or up to and including termination of the employee's employment. If the employee respondent holds a certificate and the violation under Title IX is also a violation of the Georgia Code of Ethics for Educators, notification and imposition of disciplinary action must occur as outlined by the Georgia Professional Standards Commission. If the employee respondent has a contract for a definite term, and suspension or termination is contemplated, he/she will have the right to a hearing in accordance with Georgia Code Title 20, Section 20-2-940.

5. For third-party respondents, sanctions will be imposed within the scope of Gwinnett County Public Schools authority.

## **L. Appeals**

An appeal may be filed, by either party, after a determination regarding responsibility has been issued. To file an appeal, the party must submit a written appeal request within five (5) school days for students and five (5) working days for employees of being notified of the initial determination regarding responsibility to a member of the Office of District Title IX Compliance, who will serve as the Title IX Appeal Officer. The Chief Human Resources Officer ("CHRO") may assign a designee as the Title IX Appeal Officer, when necessary, to avoid a conflict or due to other circumstances, as determined by the CHRO.

The party's written appeal request must indicate a qualifying reason for appealing the case. Qualifying reasons for an appeal are:

(a) **Procedural Irregularity that Affected the Outcome of the Matter** – GCPS did not follow its prescribed procedures, as such, a different outcome could have occurred. The party must articulate what the procedural issue is and how it impacted the outcome.

(b) **Newly Available Information** – new information that was *not reasonably* available before a determination regarding responsibility was issued and could affect the outcome of the matter. Before a substance review of the matter is considered, the party must clearly show the reason why the information was not available earlier. If the party cannot provide such information, the appeal cannot move forward.

(c) **Conflict of Interest or Bias** – the District Title IX Coordinator, Assistant Title IX Coordinator, Title IX Investigator, Title IX Decision-maker, or Employee Relations Director had a conflict of interest or a bias for **or** against Complainant or Respondent and it affected the outcome of the matter. The party must state what the conflict or bias is and how it impacted the outcome.

A party may **not** appeal a determination regarding responsibility due to being dissatisfied or disagreeing with the findings.

The Title IX Appeal Officer cannot have a conflict of interest or bias and must not have served in any of the following roles in the same matter: District Title IX Coordinator, Assistant Title IX Coordinator, Title IX Investigator, Title IX Decision-maker, or Employee Relations Director.

Once a written appeal has been filed, based on a qualifying reason, it places a hold on student sanctions or employee disciplinary actions. However, supportive measures will remain in place during the appeal process.

The timeframe to submit an appeal will be offered equitably to Complainant and Respondent and will not be extended unless there are extenuating circumstances. Failure to submit an appeal within the applicable timeframe of five (5) school days for students and five (5) working days for employees will result in the forfeiture to appeal any further and the initial determination decision will become final. Once an appeal has been received, the Title IX Appeal Officer will notify the other party as soon as practicable. The notice must include information that an appeal has been filed, the qualifying reason for the appeal, and that the other party may submit a written response. A copy of the written appeal from the other party will be included. The party not appealing will have five (5) school days for students and five (5) working days for employees to submit a written response. Should Complainant and Respondent both submit appeals, the Title IX Appeal Officer will consider both appeals concurrently.

If the Title IX Appeal Officer needs clarification on an issue on appeal, the Title IX Appeal Officer may reach out, in writing, to the assigned Title IX Decision-maker, District Title IX Coordinator, Assistant Title IX Coordinator, Title Investigator, Employee Relations Director, Complainant, or Respondent. The response back must be in writing as well. The Title IX Appeal Officer may only make a decision, using the original complaint and all evidence submitted by the parties. The Title IX Appeal Officer should not re-hear or re-investigate the complaint, unless the procedural errors were substantial and effectively denied Complainant/Respondent a fair investigation, the new information is substantial enough to warrant a new investigation, or the outcome was substantially impacted by the Title IX Decision-maker's conflict of interest or bias.

### **1. Where Respondent is an Employee or Third Party**

After a review of the information, the Title IX Appeal Officer will issue a written decision that includes the determination and the rationale. The appeal decision will be provided to both parties simultaneously. Where the respondent is an employee or a third-party, the Title IX Appeal Officer will:

- (a) Affirm the initial finding and discipline imposed (if an employee) by the Title IX Decision-maker; or
- (b) Affirm the initial finding and modify the discipline imposed (if an employee) by the Title IX Decision-maker; or
- (c) Reverse the initial findings; or
- (d) Reverse the initial findings and send back for a new investigation.

The Title IX Appeal Officer will work with the Office of Employee Relations/Title IX if a modified disciplinary action is to be imposed on an employee respondent. Disciplinary action should not be modified unless the disciplinary action imposed does not rise to the level of gravity in comparison to the violation or the disciplinary action is different from the discipline imposed for similar actions.

Where the respondent is a third-party who is affiliated with GCPS, possible sanctions will focus on eliminating access to students and/or buildings.

## **2. Where Respondent is a Student**

Where the respondent is a student, the Title IX Appeal Officer will:

- (a) Affirm the initial finding and sanction imposed by the Title IX Decision-maker; or
- (b) Affirm the initial finding and modify the sanction imposed by the Title IX Decision-maker; or
- (c) Reverse the initial findings; or
- (d) Reverse the findings and send back for a new investigation.

The Title IX Appeal Officer will work with the Office of Student Discipline and Behavioral Interventions if a modified sanction is to be imposed on a student respondent. A sanction should not be modified unless the sanction imposed does not rise to the level of gravity in comparison to the violation or the sanction is different from the sanctions imposed for similar actions.

Within ten (10) school days for students and ten (10) working days for employees, the Title IX Appeal Officer will issue a written final decision to Complainant and Respondent simultaneously. The final decision should include the rationale for reaching the stated outcome. The appeal decision is the final decision, and no other review will be conducted.

## **M. Records Maintenance**

Gwinnett County Public Schools will maintain the following information for seven (7) years:

1. All records of any actions conducted in response to an allegation, report, or formal complaint of sexual harassment, including records of any supportive measures

implemented.

2. All sexual harassment investigations, including any determinations regarding responsibility, as well as evidence/documents collected as a part of the investigation.
3. All student sanctions or employee disciplinary actions imposed on a student or employee respondent.
4. All remedies provided to a complainant.
5. All appeals, including any information used for clarification, as well as the appeal final decision.
6. All informal resolutions, including the agreements and results.
7. All materials used to train Title IX Coordinators, Title IX Investigators, Title IX Decision-makers, Title IX Appeal Decision-makers, staff and any person who facilitates an informal resolution process.

N. **Ability to Amend**

Gwinnett County Public Schools reserves the right to amend its Title IX Sex Discrimination/Sexual Harassment Grievance Policy and Procedures as needed.