

Muscogee County School District

Student Services Division

**Title IX and Sexual Harassment
District Procedures/Guidance**



**Muscogee County School District
2960 Macon Road
Columbus, GA 31906
(706) 748-2000**

*Our mission is to inspire and equip all students to achieve unlimited potential.
The MCSD is a beacon of educational excellence where all are known, valued, and inspired.*

The Muscogee County School District (MCSD) adheres to all federal, state, and local civil rights laws prohibiting discrimination in employment and education. MCSD does not discriminate on the basis of race, color, national origin, sex, disability, military status, or age in its programs, activities or employment practices and provides equal access to the Boy Scouts and other designated youth groups.

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MCS D STUDENT SERVICES
TITLE IX PROCEDURES

(NOTE: The procedures outlined below apply when students are accused of violating Title IX [sexual harassment, sexual discrimination]. If you believe an employee or third-party has violated Title IX, please report to the appropriate [coordinator](#) listed on the MCS D website.)

Under Title IX of the Education Amendments of 1972 (20 U.S.C. 1681) and its implementing regulations (34 C.F.R. 106), sexual harassment is a form of prohibited sex discrimination.

Title IX provides:

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 educational program or activity receiving Federal financial assistance.

The Muscogee County School District is committed to fostering a learning environment that is free from all unlawful discrimination, including on the basis of sex, including sexual harassment and sexual assault. In support of that commitment, the District takes steps to increase awareness of such sexual harassment and sexual assault, eliminate its occurrence in school and in school programs and activities, encourage reporting, provide support for survivors, promptly respond to all reports of sexual harassment and sexual assault, deal fairly with accused student respondents, and take appropriate action with those found responsible.

The District strives to ensure a safe and non-discriminatory educational environment and to meet its obligations under Title IX and its implementing regulations.

SCOPE, APPLICABILITY, AND JURISDICTION

Students, teachers, staff, MCS D affiliates and others participating in District programs and activities (community coaches, volunteers, etc.), while in the United States, must comply with Title IX and are subject to this Title IX Procedure.

Title IX regulations define “sexual harassment” to include three types of misconduct on the basis of sex which jeopardize the equal access to education that Title IX is designed to protect. These types of misconduct include:

- A. any instance of quid pro quo harassment by a school employee;
- B. any conduct on the basis of sex that in the view of a reasonable person is so severe and pervasive and objectively offensive that it effectively denies a person equal access to a District education program or activity; and
- C. any instance of sexual assault, dating violence, domestic (family) violence, or stalking.

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To the extent that receipt of notice of Title IX Prohibited Conduct also triggers the District’s responsibilities under other discriminatory processes, the District is prepared to meet the District’s concurrent obligations under those laws.

To fall within the jurisdiction of Title IX, the alleged Title IX Prohibited Conduct must have taken place in a District school or building or during a District Program or Activity, and against a person in the United States at the time the conduct occurred.

A District Program or Activity includes locations, events, or circumstances over which the District exercises substantial control over both the Student Respondent and the context in which the Title IX Prohibited Conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the District. Both study-abroad programs and off-campus locations that are not within a District Program or Activity are not covered by the Title IX regulations.

Given the federal mandates of Title IX and its implementing regulations, the rights and obligations provided in the District’s Title IX Procedure necessarily supersede any conflicting rights or obligations provided in any GaDOE rule, school board policies or codes of conduct. **However, where a Georgia law or MCSD policy may be implemented, that law or policy will be implemented along with Title IX processes** (for example, anyone who is a mandated reporter under Georgia law still must report to DFCS and law enforcement, where appropriate).

REPORTING TITLE IX PROHIBITED CONDUCT

A. What to Report

The types of sexual harassment covered by this Title IX Procedure (collectively “Title IX Prohibited Conduct”) includes conduct on the basis of sex that satisfies one or more of the definitions below. Note that sexual misconduct or other discrimination on the basis of sex that does not fall within these specific definitions could still violate District policy, such as the District Student Code of Conduct or any other MCSD policy or employee handbook guidance document, and should be reported to the Title IX Coordinator. If you do not make a Title IX report, you will likely still make some type of report based on the allegations presented).

1. Title IX Sexual Harassment

Conduct, on the basis of sex, that satisfies one or more of the following:

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it denies the student equal educational access.
- An employee of the District conditioning the provision of an aid, benefit, or service of the District on a student’s participation in unwelcome sexual conduct. (“*Quid pro quo*” or “this for that”)

PLEASE NOTE: The following language is very graphic and may be distressing to some readers. Please proceed with caution.

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2. Sexual Assault

- a. **Rape.** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant. Consent requires the appropriate age and mental/physical capacity.
- b. **Sodomy.** Oral or anal sexual intercourse with another person:
 - i. forcibly and/or against that person's will; OR
 - ii. not forcibly or against the person's will (non-consensually) in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. The age of consent in Georgia is 16 at the time of this procedure. O.C.G.A. § 16-6-3.

3. Sexual Assault with an Object.

To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person:

- forcibly and/or against that person's will; OR
- not forcibly or against the person's will (non-consensually) in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

4. Fondling.

The touching of the private body parts of another person (buttocks area, groin area, breasts, or other areas will be considered as needed) for the purpose of sexual gratification:

- forcibly and/or against that person's will (non-consensually); OR
- not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

5. Nonforcible Sexual Violations

- a. **Incest.** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Georgia law.
- b. **Statutory Intercourse Violation.** Nonforcible sexual intercourse with a person who is under the statutory age of consent of Georgia. The age of consent in Georgia is 16 at the time of this procedure. O.C.G.A. § 16-6-3.

6. Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship is determined based on the

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Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition:

- Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating Violence does not include acts covered under the definition of Domestic Violence.

7. Domestic Violence

A felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the Complainant;
- By a person with whom the Complainant shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
- By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Georgia;
- By any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Georgia.

To categorize an incident as Domestic Violence, the relationship between the Student Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

8. Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress.

For the purposes of this definition:

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

B. Where to Report

1. Title IX Coordinator

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The Title IX Coordinator is the individual designated by the District to coordinate its efforts to comply with Title IX responsibilities. All reports of Title IX Prohibited Sexual Conduct or other violations of the student code of conduct by a student should be reported to the Title IX coordinator [HERE](#).

Notice of allegations of Title IX Prohibited Conduct to the Title IX Coordinator or an official with authority to institute corrective measures on the District's behalf, triggers the District's response obligations under Title IX.

2. Reports to Law Enforcement and Other Agencies

For conduct that triggers the mandatory reporting requirements of the District, a report to the Department of Family and Children Services will be made in keeping with those requirements.

If you are in immediate danger, or if you believe there could be an ongoing threat to you, to another person, or to the school community, or if you believe a crime has been committed, please call 911 or (706) 748-2743 to reach the Muscogee County School District Police Department.

In some cases, the MCSD Human Resources Division will have additional reporting obligations based on the alleged behaviors of MCSD staff.

For conduct that could also constitute a crime under Georgia law, a Complainant is encouraged - but not required - to contact the police by dialing 911 or any other number for the local police agency in the jurisdiction in which the alleged incident occurred. Contacting law enforcement to make a report allows for forensic evidence to be collected, which may be helpful if a decision is made to pursue criminal charges.

School officials will assist in contacting local law enforcement authorities, if requested. School officials may make an independent report to law enforcement if they believe that is appropriate.

C. When to Report and Confidential Resources

There is no specific time frame for individuals who have experienced conduct that may constitute Title IX Prohibited Conduct to make an Initial Report pursuant to this Title IX Procedure. Individuals are, however, encouraged to make a report soon after the incident in question in order to maximize the District's ability to investigate and reach a finding.

A student may, at any time (whether or not such student decides to make a report of Title IX Prohibited Conduct to the Title IX Coordinator or any other school official), contact the MCSD Guidance and Counseling Department at (706) 748-2226, which can provide confidential emotional support and counseling*. The District makes available these counselors to all students. Confidential consultation with a counselor does not constitute notice to the District. However, such individuals may be required by law to report incidents to law enforcement or the Department of Family and Children Services, especially in the case where the alleged victim is a minor. In addition, the District cannot guarantee that conversations with a counselor might not be subject to disclosure in legal proceedings or pursuant to other legal process. Communications with attorneys and medical doctors, on the other hand, may be privileged under law.

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When the allegations described could be a crime under Georgia law, District staff, including counselors, are required by Georgia law to notify law enforcement.

D. How to Report

Student Complainants who experience any type of sexual harassment or violence are encouraged to seek help as identified above. Any person may report Title IX Prohibited Conduct, whether or not the individual reporting is the person alleged to have experienced the conduct. To make an Initial Report of Title IX Prohibited Conduct, the Title IX Office will ask for the following information, if known:

- Name of Complainant
- Complainant's role, if any, within the District (student, employee, or third-party)
- Name of Student Respondent
- Date of the incident
- Location of the incident
- Time of the incident
- Nature of the conduct (provide specific allegations as to what occurred)
- Date of previous report (if any)
- To whom any previous report was made (if any)

PROCEDURE: INITIAL REPORT, FORMAL COMPLAINT, INVESTIGATION, INFORMAL RESOLUTION, DETERMINATION, AND APPEAL

A. Receipt of an Initial Report of Title IX Prohibited Conduct by the Title IX Coordinator for Students

1. Offer of Supportive Measures

Upon receipt of notice of an Initial Report of Title IX Prohibited Conduct (which may come from any individual), the Title IX Coordinator will promptly contact the Student Complainant and inform them:

- of the availability of Supportive Measures, including that the Supportive Measures are available with or without filing a Formal Complaint;
- of the availability of confidential counseling resources;
- how to file a Formal Complaint;
- of the right of the parties to have a Support Person present during meetings;
- that, if the reported conduct could be a crime, the Complainant has the right but not the obligation to file a police report, and that if there is a police investigation, the Title IX Coordinator will coordinate with law enforcement; and
- of the importance of preserving evidence and identification and location of Witnesses.

If on the face of the Initial Report, the Title IX Coordinator determines that the conduct alleged does not fall within the scope of Title IX, the Title IX Coordinator may also inform the Complainant that the matter does not constitute a Title IX violation but that it may be referred to another District process. Even if the matter is referred, the Complainant will still receive an offer of Supportive Measures.

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Supportive Measures will be different for every matter and will be based on individualized review. The District will offer counseling to the Complainant where that is deemed appropriate. In the case of student complainants, Supportive Measures could include extensions of deadlines or other course related adjustments, modifications of class schedules, school campus escort services, mutual restrictions on contact between the Parties, increased security and monitoring of certain areas of the school or District building, and other similar measures.

The District will maintain as confidential any Supportive Measures provided to the Complainant or Student Respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the Supportive Measures; Supportive Measures will be shared on a “need to know” basis.

The Title IX Coordinator will coordinate the effective implementation of Supportive Measures and will consider the Complainant’s wishes as much as possible/practicable with respect to Supportive Measures.

2. Privacy and Confidentiality

Notice to the Title IX Coordinator or other administrator of the District of conduct that could constitute Title IX Prohibited Conduct triggers the District’s obligations under this Title IX Procedure. If the Title IX Coordinator or administrator becomes aware that Title IX Prohibited Conduct is alleged to have occurred, the District has an obligation to review the available information and determine whether to proceed to an Investigation.

In this context, Privacy and Confidentiality have distinct meanings.

Privacy means that information related to a complaint will be shared with only a limited number of District employees who “need to know” in order to assist in the assessment, Investigation, and resolution of the report or complaint. All employees who are responsible for the District’s response to Title IX Prohibited Conduct shall receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), to the extent those protections do not violate Title IX regulations and requirements.

Confidentiality exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. Because of laws relating to reporting and other state and federal laws, the District cannot guarantee total Confidentiality relating to incidents of Title IX Prohibited Conduct except where those reports are privileged communications under the law. Even then, there are exceptions to maintaining Confidentiality set by law; for example, physicians and nurses who treat any physical injury sustained during a sexual assault are required to report it to law enforcement. Also, physicians, nurses, psychologists, psychiatrists, teachers and social workers must report a sexual assault committed against a person under age 18.

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Except as aforesaid, information shared with other individuals is not legally protected from being disclosed. However, the District takes requests for Privacy and Confidentiality seriously, to the extent it can do so while at the same time fulfilling its responsibility to provide a safe and nondiscriminatory environment for all students and the school community. The District in such circumstances will make sure the Complainant is aware he/she/they are protected from Retaliation. **Retaliation against any person who participates in the process is strictly prohibited and will not be tolerated.**

Should a Complainant make a request that the District not disclose the Complainant's identity to the Student Respondent, the Title IX Coordinator will inform the Complainant that the District's ability to respond to the allegations and Investigate will be very limited if the request is granted. A Complainant who initially requests Confidentiality is not prohibited from later requesting that the District conduct a full Investigation.

3. Emergency Removal

Based on an Initial Report or Formal Complaint of Title IX Prohibited Conduct, the Title IX Coordinator, school administrators, or others as appropriate, may undertake an individualized safety and risk analysis to determine whether the allegations indicate the Student Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX Prohibited Conduct. If the District determines removal is appropriate, the Respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal. All such removals will occur in keeping with the provisions of the IDEA and Section 504 of the Rehabilitation Act.

B. Filing a Formal Complaint

After the Initial Report, the Title IX Procedure will not move forward until a Formal Complaint is filed. A Formal Complaint can be filed in one of two ways:

- 1. Complainant submits Formal Complaint.** A Complainant, or a Complainant's parent or guardian if the Complainant is under 18 years of age, may complete and sign a Formal Complaint alleging Title IX Prohibited Conduct against a Student Respondent and requesting that the District Investigate the allegation of Title IX Prohibited Conduct. At the time of filing a Formal Complaint, a Student Respondent must be enrolled in the District.
- 2. Title IX Coordinator submits Formal Complaint.** The Title IX Coordinator may also complete and sign a Formal Complaint. A Complainant may request that the District not proceed with an Investigation or further resolution under this Procedure, and a Complainant's wishes with respect to whether the District Investigates will be respected unless the Title IX Coordinator determines that signing a Formal Complaint over the wishes of the Complainant is not clearly unreasonable in light of the known circumstances.

The Title IX Coordinator will inform the Complainant that due to various federal and state laws and/or in order to protect the safety of the District community some circumstances require the District to move forward with an Investigation, **even if the Complainant requests otherwise.**

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The District's decision is subject to a balancing test that requires the District to consider a range of factors, including, but not necessarily limited to:

- Whether there have been multiple reports of Title IX Prohibited Conduct relating to a single Student Respondent;
- The seriousness of the alleged Title IX Prohibited Conduct;
- Whether there is a likelihood that the Student Respondent would be a danger to the Complainant or the District community;
- The age of the Complainant;
- Whether the report of Title IX Prohibited Conduct can be effectively addressed through another type of intervention; and
- The ability of the District to obtain relevant evidence.

- **Receipt of a Formal Complaint of Title IX Prohibited Conduct**

- a. **Notice of Formal Complaint.** Upon receipt of a Formal Complaint, the District will provide a Notice of Formal Complaint to the Parties for whom the District knows their identity, including the following details:
 - i. A description of the District's Title IX Procedure, including any Informal Resolution process, and reference to the MCSD Student Services Title IX Coordinator website.
 - ii. A description of the allegations including sufficient details known at the time such as:
 - the identities of the Parties involved in the incident;
 - the conduct allegedly constituting Title IX Prohibited Conduct; and
 - the date and location of the alleged incident (if known).
 - iii. A statement that the Student Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Investigation by the Decision-maker.
 - iv. A statement that the Parties may have an advisor/supportive individual (Support Person) of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence as described herein.

The Notice of Formal Complaint will be provided so that both parties have sufficient time to respond and prepare for any investigative interviews.

After receiving Notice of Formal Complaint, both the Complainant and the Student Respondent will be asked to identify any academic or other significant conflicts that would affect the timing of the Investigation.

- **Ongoing Notice Requirement.** If, in the course of an Investigation, the District decides to investigate allegations about the Complainant or Student Respondent that are not included in the initial Notice of Formal Complaint provided, the District will provide notice of the additional allegations to the Parties whose identities are known.

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- **Rights and Responsibilities of Parties and Witnesses.** During an Investigation and under this Title IX Procedure, the Parties and Witnesses have the following responsibilities and rights:

a. Responsibilities of the Parties and Witnesses:

- The responsibility to be truthful, to cooperate with the process, and to follow the directions of District staff responsible for administering this process;
- The responsibility not to Retaliate against or Intimidate any individual who has reported Title IX Prohibited Conduct or who has participated as a Party or Witness in the process; and
- The responsibility to keep private (by not disseminating beyond Support Persons) documents, materials, and information received from the District during this process¹; and,

b. Rights of the Complainant and Student Respondent (both parties)

- The right to be treated equitably and receive the same equitable access to Supportive Measures;
- The right to have each phase of the Title IX Procedure completed within a reasonably prompt timeframe;
- The right to a Support Person to support and/or advise the Party;
- The right to receive a Notice of Formal Complaint that provides sufficient detail about the allegations and the applicable District policies for the Student Respondent to be able to respond and for both Parties to understand the scope of the Investigation;
- The right to decline to give a statement about the allegations or participate in the Investigative process;
- The right to participate in the Investigation, including by identifying fact Witnesses and Expert Witnesses and identifying and/or providing inculpatory, exculpatory and other relevant information and evidence to the Investigator;
- The right to receive any Notice of Dismissal;
- The right to appeal any Notice of Dismissal;
- The right, upon agreement of the Parties, to enter into an Informal Resolution of the Formal Complaint;
- The right to review all evidence directly related to the allegations, in electronic format or hard copy, with at least ten (10) calendar days for the Parties to inspect, review, and respond to the evidence;
- The right to receive an Investigative Report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least ten (10) calendar days for the Parties to respond;

¹ A Party or Witness may not distribute materials obtained through the process and may not engage in Retaliatory or Intimidating conduct aimed at any other participants in the process. The District will investigate allegations of a person engaging in any of these prohibited acts. The District recognizes, however, that it cannot otherwise prevent individuals from exercising First Amendment rights to speaking openly about their experience and the District process.

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- The right to receive a Written Determination Regarding Responsibility (if any);
- The right to appeal the Written Determination Regarding Responsibility to a neutral Appeal Officer; and
- The right to receive a Notice of Outcome of Appeal.

c. Rights of the Student Respondent

- The right not to have any disciplinary Sanctions imposed before a finding of responsibility in accordance with this Title IX Procedure; and
- The right to be presumed not responsible for the alleged Title IX Prohibited Conduct until a determination regarding responsibility is made by the Decision-maker.

6. Initial Assessment of Formal Complaint

The Title IX Coordinator shall make an initial assessment as to whether the Formal Complaint on its face alleges an act of Title IX Prohibited Conduct is covered by this Title IX Procedure. If it does not, the District will dismiss the matter as described below.

a. Dismissal of Formal Complaints Prior to Investigation or Resolution

- i. Dismissal Prior to Investigation.** If the assessment above determines that the conduct alleged in the Formal Complaint would not constitute Title IX Prohibited Conduct even if true, did not occur against a person in the United States, or there is not enough information to carry out the Title IX Procedure (for example, the identities of the people involved are unknown), then the District shall dismiss the Formal Complaint for purposes of this Title IX Procedure. If the Formal Complaint alleges multiple claims that arise out of the same facts and circumstances, and the Title IX Coordinator determines that some conduct is covered under Title IX and some is not, all claims may proceed together to be resolved under this Title IX Procedure. If, however, some claims do not arise out of the same facts and circumstances, are not covered by Title IX, and could violate other District policy, that conduct will be dismissed and referred to another District process, such as the student tribunal process, and the Title IX Procedure will proceed with respect to the covered conduct only. Any conduct dismissed under this Title IX Procedure that could constitute a violation of the student code of conduct or any other District policy may be handled through other applicable District processes, including disciplinary processes.
- ii. Notice of Dismissal Prior to Investigation.** Upon dismissal, the District shall promptly send a Notice of Dismissal including the reason(s) therefor simultaneously to the Parties.

C. Informal Resolution

- 1. Informal Resolution Process.** At any time after a Formal Complaint is filed, the Title IX Coordinator may, in their discretion, choose to offer and facilitate an Informal Resolution process, so long as both Parties give voluntary, informed, written consent to attempt Informal Resolution. The District may not require the Parties to participate in an Informal Resolution

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process or require as a condition of enrollment or continuing enrollment, or enjoyment of any other right, waiver of the right to a formal Investigation and adjudication of Formal Complaints of Title IX Prohibited Conduct. Any person who facilitates an Informal Resolution will be experienced and trained in dispute resolution and trained on this Title IX Procedure.

2. Withdrawing from an Informal Resolution Process. At any time prior to agreeing to an Informal Resolution, any Party has the right to withdraw from the Informal Resolution process and resume the process with respect to the Formal Complaint.

3. Matters Not Eligible for Informal Resolution. No Informal Resolution process will be offered before a Formal Complaint is filed.

D. Investigation

For any allegations in any Formal Complaint not subject to dismissal under this Title IX Procedure, the matter will proceed to an Investigation. The formal Investigation phase is the period during which the Investigator gathers information about the allegations.

This period of time is the Parties' opportunity to provide input regarding the collection of evidence, but the burden of gathering evidence and the burden of proof is on the District. The District may, in its discretion, consolidate the Investigation of multiple Formal Complaints where the allegations arise out of the same facts.

1. Support During the Investigation Process

a. Support Persons

The Support Person serves as an advisor to the Party. The Support Person may assist a Party on written submissions provided they are verified by the Party; however, the Support Person does not speak or advocate on behalf of the Party in District proceedings. Any Support Person who violates these expectations may not be permitted to participate further in the process or as a Support Person. Only one Support Person will be allowed to accompany a Party to meetings with Investigator(s) (including meetings that occur using technology, such as Zoom). The Support Person can be an individual other than and in addition to the parent or guardian of a minor child who is a Party to the process. A Party may request that the District provide a Support Person.

b. Attorney as Support Person

Each Party may elect to identify an attorney to serve as a Support Person. Such an individual is obligated to follow the requirements for Support Persons stated in above. While a Support Person may be an attorney, the attorney has no different role in the process and serves as a Support Person in the same capacity as a non-attorney.

2. Investigation Process – Student Title IX Complaints

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a. Investigator. The Title IX Coordinator will designate an individual to conduct the Investigation of a Formal Complaint. The MCSD has designated its Director of Student Services and Executive Director of the Program for Exceptional Students as Investigator's for complaints against students.

b. Notice of Interviews and Meetings. The District will send the Parties and their Support Persons advance written notice of any investigative interviews or meetings at which the Party is expected to be present.

c. Method of Information/Evidence Gathering. The Investigator may gather information in multiple ways. The Investigator may collect relevant documents and other information and may also interview Parties and/or Witnesses. In addition, a Complainant or Respondent may:

- submit documentary information to the Investigator;
- submit a list of Witnesses they would like to be interviewed by the Investigator; and/or
- request that the Investigator attempt to collect documents and other information that are not accessible to the requesting Party.

d. Medical Records. For purposes of this Title IX Procedure, the District will **not** access, consider, disclose, or otherwise use a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the District obtains that Party's voluntary, written consent to do so.

e. Disclosure of information. After the Investigator has concluded the collection of evidence, the District will send the Parties and their respective Support Person evidence directly related to the allegations, in electronic format or hard copy, with at least ten (10) calendar days, excluding holidays when the District is closed, for the Parties to inspect, review, and respond to the evidence.

f. Investigative Report. After the Investigator has received the Parties' response to the evidence (10 calendar days, not to include any holidays where the District is closed), the Investigator will complete the Investigative Report that fairly summarizes the relevant evidence and deliver the report to the Title IX Coordinator. The Title IX Coordinator will prepare a Notice of Charge letter and make it and the Investigative Report available to the Parties and their Support Persons in electronic format or hard copy, with at least ten (10) days for the Parties to respond.² In the event the determination is made to dismiss the Formal Complaint (see below), that information will be included in the Investigative Report.

² Before the Investigator's Report is made available to the Parties, the Title IX Coordinator will redact personally identifying information, such as phone numbers, addresses, and medical information. The Title IX Coordinator will also propose redactions of non-permissible and unrelated information in the Investigator's Report, and highlight those proposed redactions to the Parties. The Parties may receive electronic access to view the Investigator's Report. The Notice of Charge letter shall indicate that the matter is being referred to a Decision-maker, the identity of the Decision-maker, and a timeline for the Parties' submission of new evidence or objection to evidence considered in the

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3. Post-Investigation Options

a. Dismissal of Formal Complaint After Investigation

i. **Mandatory Dismissal.** The District must dismiss the Formal Complaint if after the Investigation it is determined by the Title IX Coordinator that the conduct alleged in the Formal Complaint does not constitute Title IX Prohibited Conduct or did not occur against a person in the United States. If the Formal Complaint alleges multiple claims that arise out of the same facts and circumstances, and the Title IX Coordinator determines that some conduct is covered under Title IX and some is not, all claims may proceed together to be resolved under this Title IX Procedure. If, however, the Title IX Coordinator determines some claims do not arise out of the same facts and circumstances, are not covered by Title IX, and could violate other District policy, including the code of conduct, that conduct will be dismissed and referred to another District process, which may include disciplinary processes, and the Title IX Procedure will proceed with respect to the covered conduct only.

ii. **Discretionary Dismissal.** The District may dismiss the Formal Complaint if:

- The Student Respondent is no longer enrolled in the District;
- Specific circumstances prevent the District from gathering sufficient evidence to reach a determination; and/or
- The Complainant informs the Title IX Coordinator in writing that the Complainant desires to withdraw the Formal Complaint or allegations therein. A Complainant may notify the Title IX Coordinator at any time that the Complainant does not wish to proceed with the Investigation process. If such a request is received, the Title IX Coordinator will inform the Complainant that the District's ability to respond to the allegation may be limited if the allegations are withdrawn.

The Title IX Coordinator will consider the above factors in reaching a determination as to whether to terminate the Investigation process. In the event that the Title IX Coordinator determines that the Investigation will continue, the Title IX Coordinator will notify the Complainant of that determination. The Title IX Coordinator will include in that notification a statement that the Complainant is not required to participate in the Investigation but that the process will continue.

In the event that the Title IX Coordinator determines that the Investigation will be terminated, both Parties will be notified.

b. **Referral.** In the event of dismissal after the Investigation (mandatory or discretionary), the Title IX Coordinator may refer some or all of the matter for consideration under another applicable District policy or procedure, if any.

investigation, generally three (3) days from the date the Notice of Charge letter and Investigator's Report is made available to the Parties.

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c. Notice of Dismissal after Investigation. Upon dismissal, the District shall promptly send a Notice of Dismissal (mandatory or discretionary) and reason(s) therefore simultaneously to the Parties.

d. Right to Appeal Notice of Dismissal. The Parties may appeal a Notice of Dismissal via the District’s Appeal Form. Each Party may submit a written appeal of up to 6,000 words in length, which will be shared with the other Party. The Parties must submit the appeal by the date determined by the Title IX Office, generally ten (10) calendar days from the receipt of the Notice of Dismissal. The appeal is submitted to the Appeals Official(s) and will be limited to the following grounds:

- Were there any procedural irregularities that substantially affected the outcome of the matter to the detriment of the process?
- Was there any substantive new evidence that was not available at the time of the decision that could not have been available based on reasonable and diligent inquiry that would substantially affect the outcome of the decision?
- Is the decision one that a reasonable person might have made?

Upon receipt of a Party’s appeal, the Title IX Coordinator will share it with the other Party. Each Party may submit a response to the other Party’s appeal (no more than 3,000 words). Each Party must submit this response by the date determined by the Title IX Coordinator, generally seven (7) calendar days after the other Party’s appeal has been shared. The appealing Party will have access to the other Party’s response to the appeal, but no further responses will be permitted.

The Title IX Coordinator is permitted, but not required, to file a response to a Party’s appeal to respond to concerns relating to procedural irregularities including the Investigation. The Title IX Coordinator may submit one response for each Party that files an appeal (that raises a procedural irregularity). Each response by the Title IX Coordinator should be no more than 1,500 words. The Parties will have access to the Title IX Coordinator response(s) to the appeal, but no further responses will be permitted.

The remedy is limited to directing the Title IX Coordinator to issue a Notice of Charge and proceed to the Decision-Making Process.

E. Decision-Making Process

For any Formal Complaints that continue past the Investigation phase (not subject to Dismissal or Informal Resolution after Investigation), the matter will proceed to a Decision-Maker, as appointed by the Title IX Coordinator. The District’s Student Decision-Maker is the Senior Director of Regulatory Compliance.

The Title IX Coordinator will notify both the Complainant and the Respondent in writing that the matter has been charged, by issuing a Notice of Charge, and has been referred to a Decision-Maker to decide the matter. The Title IX Coordinator shall submit the Investigator’s Report, to include all evidence and the Notice of Charge, to the Decision-Maker.

1. Role of the Decision-Maker

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The Decision-Maker will be a professional, neutral decision-maker, experienced and trained in adjudicating matters of civil rights, sexual harassment and trained on Title IX law and this Title IX Procedure. The Decision-Maker will have no prior involvement in or knowledge of the allegations at issue in the case, no personal relationship with any of the Parties or Witnesses, nor any other source of bias.

The Decision-Maker will be identified to the Parties in the Notice of Charge sent by the Title IX Coordinator. The Decision-Maker will not report to any Principal, the Student Services Division, nor the Human Resources Division of the District. No person who has a conflict of interest may serve as the Decision-Maker. A conflict of interest exists if the Decision-Maker has prior involvement in or knowledge of the allegations at issue in the case, has a personal relationship with any of the Parties or Witnesses, or has some other source of bias.

Either Party may assert, in writing, that a Decision-Maker has a conflict of interest. A request to recuse a Decision-Maker based on a conflict must be submitted within 1 business day's receipt of the name of the Decision-Maker in the Notice of Charge. The request is to be submitted to the Title IX Coordinator. A determination will be made whether a Decision-Maker has a conflict of interest, and if so that Decision-Maker will be replaced by an alternate.

The Investigator will be available to answer any questions from the Decision-Maker about the Investigation.

The Decision-Maker will issue the Written Determination Regarding Responsibility.

2. Determination Process

The Decision-Maker shall review the Investigator's Report and all evidence and issue a Written Determination Regarding Responsibility as to the allegations under the Formal Complaint within a reasonable time period, but no longer than ten (10) calendar days (excluding days in which the District is closed/holidays) of the issuance of the Notice of Charge.

a. New Evidence and/or Rebuttal Evidence; Objection of Evidence; Evidentiary Review Process.

i. New Evidence and/or Rebuttal Evidence. New Evidence is evidence that was not available at the time of the charge decision/issuance of the Notice of Charge, could not have been available based on reasonable and diligent inquiry, and is relevant to the matter. Rebuttal Evidence is evidence presented to contradict other evidence in the Investigator's Report, which could not have been reasonably anticipated by a Party to be relevant information at the time of the Investigation. New Evidence and Rebuttal Evidence may be considered at the discretion of the Decision-Maker; however, in no event shall a Party, who has declined to give a statement about the incident during the Investigation, be allowed to give such a statement for the first time after the Notice of Charge has been created and sent. This section allows for the rare instance of the inclusion of information that was not available during the Investigation or that could not have been reasonably anticipated to be relevant to rebut an issue that came to light, to be used during the Decision-making process.

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The submission of New and/or Rebuttal Evidence must be submitted to and received by the Title IX Coordinator by the date set in the Notice of Charge, generally within three (3) calendar days after the Investigator's Report is made available to the Parties, by making a written request, no longer than 1,000 words. New/Rebuttal Evidence should be attached to the written request.

ii. Objection of Evidence. If a Party objects to evidence included or excluded from the Investigator's Report, the Party may make a written request to have evidentiary concerns considered by the Decision-Maker through the Title IX Coordinator. Such objections to evidence included or excluded must be submitted to the Title IX Coordinator by the date set in the Notice of Charge, generally within three (3) calendar days after the Investigator's Report is made available to the Parties, by making a written request, no longer than 1,000 words. Evidence claimed to be excluded should be attached to the written request.

iii. Evidentiary Review Process. If the Title IX Coordinator takes new evidence, the information should be submitted to the Decision-Maker, the Title IX Coordinator will forward the Objection or the New/Rebuttal Evidence to the Decision-Maker within one (1) day of his or her receipt of same. The Decision-Maker has the authority to make all evidentiary decisions relating to what information is relevant; that is, what information should be included or excluded from the Investigator's File. When the Decision-Maker proposes to exclude evidence objected to as requested or proposes to add New or Rebuttal Evidence to the file that not all Parties have reviewed, the Decision-Maker shall submit an Evidentiary Notice to the Parties as a notification of the exclusion or inclusion of evidence contained or not contained in the Investigator's Report. The Decision-Maker shall be deemed to have declined a request under this section if the Parties have not received such Evidentiary Notice from the Decision-Maker.

An opposing party shall be allowed two (2) days from the receipt of the Evidentiary Notice to submit their objection to the evidence being excluded or included. The Decision-Maker shall consider such objection, however the Decision-Maker is the final authority as to the relevance and irrelevance of the evidence in making his or her decision. Objections to the inclusion or exclusion of evidence cannot be the basis for appeal unless they were made through the Evidentiary Review process before the Written Determination Regarding Responsibility is issued. The standard for review of evidentiary decisions on appeal will be whether the Decision-Maker's evidentiary decision was clearly erroneous and substantially affected the Decision-Maker's decision to the detriment of the appealing Party.

b. Evidentiary Protections. The Decision-Maker will prohibit any evidence about the Complainant's sexual predisposition or prior sexual behavior as not relevant, unless such evidence of Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

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3. Written Determination Regarding Responsibility

Within ten (10) calendar days of when the Investigator's Report is made available to the parties and received by the Decision-Maker, excluding days on which the District is closed/holidays, the Decision-Maker will make a determination as to the allegations under the Formal Complaint and issue a Written Determination Regarding Responsibility for submission to the Parties.

The Decision-Maker shall apply the Preponderance of the Evidence standard in his or her review of the evidence and in making his or her determination.

The Written Determination Regarding Responsibility shall include:

- Identification of the allegations potentially constituting Title IX Prohibited Conduct;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews with Parties and Witnesses, site visits, and methods used to gather other evidence;
- Findings of fact presented by the Investigator;
- Conclusions about whether the alleged Title IX Prohibited Conduct occurred;
- The rationale for the result as to each allegation;
- Any Sanctions imposed or recommended on the Student Respondent;
- Whether Remedies or Supportive Measures will be provided to the Complainant; and
- A statement about where to file an Appeal.

The Decision-Maker may, but is not required to, consult with District personnel regarding any Sanctions and Remedies appropriate to the specific Student Respondent and Complainant.

The Title IX Coordinator will be responsible for implementing Remedies, including the continuation of any Supportive Measures and/or any additional or on-going accommodations for both Parties. The Title IX Coordinator will cause the Written Determination Regarding Responsibility to be sent to the Parties, with the signatures of the Title IX Coordinator, the Investigator, and the Decision-Maker. The Title IX Coordinator will provide copies of the Written Determination Regarding Responsibility and Sanctions and/or Remedies (if any) to the Principal of the school of enrollment for their records.

The Decision-Maker must explain decisions on responsibility and Sanctions (if applicable) and Remedies with enough specificity for the Parties to be able to file meaningful appeals.

The consideration of whether Remedies and Sanctions go into immediate effect or are held in abeyance pending appeal or some combination thereof, will be determined on a case-by-case basis by the Title IX Coordinator.

The Written Determination Regarding Responsibility becomes final:

- if an appeal is not filed, the date on which an appeal would no longer be considered timely; or

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- if an appeal is filed, on the date that the District provides the Parties with the written determination of the result of the appeal.

F. Appeal of a Written Determination Regarding Responsibility

1. Submission of Appeal

Both Parties have the right to an appeal from a Written Determination Regarding Responsibility on the bases set forth below. Appeals may be submitted by a Complainant or Respondent in writing to the Title IX Coordinator, who will forward the appeal to a designated Appeal Officer to decide the appeal. The Appeal Officer will be a professional neutral decision-maker, experienced and trained in adjudicating matters of civil rights, sexual harassment and/or sexual violence and trained on this Title IX Procedure. The Appeal Officer will have no prior involvement in or knowledge of the allegations at issue in the case, no personal relationship with any of the Parties or Witnesses, nor any other source of bias.

Each Party may submit a written appeal of up to 3,000 words in length, which will be shared with the other Party. The Parties must submit the appeal by the date determined by the Title IX Coordinator, generally ten (10) calendar days from the receipt of the Written Determination Regarding Responsibility (if any).

2. Grounds for Appeal

The grounds for appeal are limited to the following:

- Were there any procedural irregularities that substantially affected the outcome of the matter to the detriment of the appealing Party?
- Was there any substantive new evidence that was not available at the time of the decision and that could not have been available based on reasonable and diligent inquiry that would substantially affect the outcome of the decision?
- Did the Title IX Coordinator, Investigator(s), or Decision-Maker have a conflict of interest or bias for or against Complainants or Student Respondents that affected the outcome of the matter?
- For matters that proceeded to Sanctioning and imposition of Remedies, are the Sanction and/or Remedies ones that could have been issued by reasonable persons given the findings of the case?

In composing appeals, Parties should format their arguments following these four grounds as the organizational structure.

As stated herein, objections to the inclusion or exclusion of evidence cannot be the basis for appeal unless they were made through the evidentiary review before the issuance of the Written Determination Regarding Responsibility. The standard for review of evidentiary decisions on appeal will be whether the evidentiary decision was clearly erroneous and substantially affected the Decision-Maker's decision to the detriment of the appealing student.

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Upon receipt of a Party's appeal, the Title IX Coordinator will share it with the other Party. Each Party may submit a response to the other Party's appeal (no more than 3,000 words). Each Party must submit this response by the date determined by the Title IX Coordinator, generally ten (10) calendar days after the other Party's appeal has been shared. The appealing Party will have access to the other Party's response to the appeal, but no further responses will be permitted.

G. Appeal Decision

The Appeal Officer will provide the Notice of Outcome of Appeal no later than ten (10) calendar days after receipt of all appeal documents.

As needed, the Appeal Officer will consult with the Title IX Coordinator regarding the management of ongoing Remedies. The Appeal Officer may reject the appeal in whole or in part, issue a new decision regarding responsibility, issue new or revised Sanctions and Remedies, or refer the matter to a new Decision-Maker.

DEFINITIONS, ADDITIONAL INFORMATION AND APPENDICES

Retaliation and Intimidation.

It is a violation of MCSD Policy to Intimidate or Retaliate against any person making a complaint or responding to a complaint under this Title IX Procedure or against any person participating in the Investigation of any such allegation under this Title IX Procedure (including being the Respondent or testifying as a Witness). No person may threaten, coerce, or discriminate against any individual for pursuing or exercising any right or privilege secured by Title IX, or because the individual has made a report or complaint, responded to a complaint, testified, assisted, or participated or refused to participate in any manner in an Investigation or proceeding related to this Title IX Procedure.

- **Retaliation** includes, but is not limited to, adverse action related to employment, academic opportunities, participation in MCSD programs or activities, or similar punitive action.
- **Intimidation** includes any threatening statement or conduct made with the intent to prevent or dissuade any Party or Witness from reporting or participating in the process.

All Parties to a concern and all persons participating in the Investigation of a concern are prohibited from engaging in actions intended to Retaliate or Intimidate directly or through support persons.

Charging a student with a code of conduct violation for making a materially false statement in bad faith in the course of an Investigation does not constitute Retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any Party made a materially false statement in bad faith. The exercise of rights protected under the First Amendment does not constitute Retaliation.

Reports of alleged violations of MCSD policy or Court Orders prior to a finding of responsibility either will be incorporated into the pending matter or referred separately to another MCSD process. After a Respondent has been found responsible for Title IX Prohibited Conduct, if there is a new allegation that the Respondent has engaged in Retaliation, Intimidation, or violated a Court Order or MCSD

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policy relating to the matter, the Title IX Office will investigate the allegation and determine whether to refer the matter to be handled through another MCSD process.

Process for Evaluating Requests for Disability Accommodations.

Parties or Witnesses may request disability-related accommodations from the Title IX Coordinator. Upon receipt of a request for a disability-related accommodation, the Title IX Coordinator will coordinate a meeting with the appropriate MCSD personnel and the individual requesting the accommodation to explain the steps involved in the applicable Title IX process (e.g., meetings, interviews, document submissions). If a participant requests accommodations, if needed, an Investigation under this Title IX Procedure may be delayed (or that person's participation postponed) until the participant requesting such accommodations has had their request evaluated and, as appropriate, until accommodations have been implemented.

The Title IX Coordinator will provide a written statement of the accommodations that will be provided in the process.

If a Party seeking an accommodation does not agree with the statement of accommodations, the Party may seek written review of the accommodations. The request to review the accommodations must be made in writing to the Title IX Coordinator, who will submit the request for review to the ADA Coordinator for the District. The ADA Coordinator will review and respond to the request, generally within three (3) days. The accommodations recommended by the ADA Coordinator are final unless there is a change of circumstance.

Appendix A: Definitions

Affirmative Consent: affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that the person has the Affirmative Consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean Affirmative Consent, nor does silence mean Affirmative Consent. Affirmative Consent must be ongoing throughout a sexual activity and can be revoked at any time. Affirmative Consent may be based on a condition(s), e.g., the use of a condom, and that condition(s) must continue to be met throughout an activity, unless there is mutual agreement to forego or change the condition. When there is no Affirmative Consent present during sexual activity, the activity at issue necessarily occurred "against the person's will."

Appeal Officer: a neutral decision-maker experienced and trained in adjudicating matters of civil rights, sexual harassment and/or sexual violence and trained on this Title IX Procedure, who will review the Parties' appeals and issue the Notice of Outcome of Appeal.

Complainant: the Party to the process who has allegedly experienced the alleged Title IX Prohibited Conduct at issue. The District uses this term to provide consistency with the Title IX regulations and many peer institutions. Use of this term does not necessarily indicate that this person either reported the conduct or requested that the District pursue the matter.

Confidential Resource: a person who by law is exempted from the obligation to report an allegation of conduct that could constitute Title IX Prohibited Conduct to any entity, including the District's Title IX Coordinator, District counselors, or law enforcement, in circumstances in which the reported conduct could be a crime (except, as to law enforcement, if the Complainant is a minor or if there is a belief that there is an imminent threat of harm to self or others).

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Confidentiality: exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses.

Court Order: any formal order issued by a local, state or federal court that restricts a person's access to another District community member, such as an emergency, temporary or permanent restraining order.

Dating Violence: violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant, including sexual or physical abuse or the threat of such abuse, but excluding acts covered under the definition of Domestic Violence.

Decision-Maker: a professional, neutral decision-maker experienced and trained in adjudicating matters of civil rights, sexual harassment and/or sexual violence and trained on this Title IX Procedure who will review the Investigator's Report and the Evidence and issue the Written Determination Regarding Responsibility.

District Program or Activity: locations, events, or circumstances over which the District exercised substantial control over both the alleged Respondent and the context in which the Title IX Prohibited Conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the District.

Duress: a direct or implied threat of force, violence, danger, hardship, or retribution that is enough to cause a reasonable person of ordinary sensitivity to do or submit to something that they would not otherwise do or submit to. When deciding whether the act was accomplished by duress, all the circumstances, including the age of the Complainant and their relationship to the Respondent, are relevant factors.

Expert Witness: a Witness identified by a Party or the Title IX Coordinator, Investigator, or Decision-Maker that has special expertise in a technical matter, such as forensic evidence.

Family Violence: the occurrence of one or more of the following acts between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household: (1) Any felony; or (2) Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass. The term "family violence" shall not be deemed to include reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention.

Force: an act is accomplished by force if a person overcomes the other person's will by use of physical force or induces reasonable fear of immediate bodily injury.

Formal Complaint: a document filed and signed by a Complainant or filed and signed by the Title IX Coordinator alleging Title IX Prohibited Conduct against a Respondent and requesting that the District investigate the allegations.

Incapacitation: a person lacks the ability to voluntarily agree (that is, to give Affirmative Consent) to sexual activity because the person is asleep, unconscious, under the influence of an anesthetizing or intoxicating substance such that the person does not have control over their body, is otherwise unaware that sexual activity is occurring, or is unable to appreciate the nature and quality of the act. Incapacitation is not necessarily the same as legal intoxication.

Informal Resolution: a voluntary process that the Parties may consent to participate in in lieu of a full Investigation and Determination process as outlined herein.

Initial Report: a report of conduct that may constitute Title IX Prohibited Conduct, which may be made by any individual, even if not the person alleged to have experienced the conduct. An Initial Report is made prior to a Formal Complaint, and triggers the Title IX Coordinator's obligation to

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contact the Complainant and inform the Complainant of Supportive Measures, as described in the procedures.

Intimidation: includes any threatening statement or conduct made with the intent to prevent or dissuade any Party or Witness from reporting or participating in the Title IX Procedure.

Investigation: the phase of the Title IX Procedure when the Parties are invited to provide evidence and identify Witnesses to the Investigator related to the allegations in the Notice of Formal Complaint.

Investigative/Investigator’s Report: a formal written document that fairly summarizes the relevant evidence gathered during the Investigation and that is provided to the Parties with at least 10 days to respond.

Investigator: the person assigned by the Title IX Coordinator to investigate Formal Complaints under this Title IX Procedure. The Investigator shall have been trained on all elements of an Investigation as required by federal and state law.

Menace: a threat, statement, or act showing intent to injure someone.

New Evidence: evidence that was not available at the time of the charge decision, could not have been available based on reasonable and diligent inquiry, and is relevant to the matter.

Nonforcible Sexual Violations: Any of the following acts:

- **Incest.** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Georgia law.
- **Statutory Intercourse Violation.** Nonforcible sexual intercourse with a person who is under the statutory age of consent of Georgia. The age of consent in Georgia is 16.

Notice of Charge: the formal notification issued by the Title IX Coordinator following an Investigation that the matter will be charged and will proceed to a Determination process.

Notice of Dismissal: the formal notification issued by the Title IX Coordinator following a determination that the matter does not meet the definitional or jurisdictional standards of Title IX and stating the reasons for dismissal.

Notice of Formal Complaint: the formal notification issued by the Title IX Coordinator that a Formal Complaint has been filed and including the details set forth in these procedures.

Notice of Outcome of Appeal: a written determination describing the Appeal Officer’s final decision of a matter brought forward on appeal.

Party/Parties: the generic or collective term used to refer to Complainant(s) and Respondent(s).

Preponderance of the Evidence: the standard of proof used by the MCSD. A finding by the Preponderance of the Evidence means that the credible evidence on one side outweighs the credible evidence on the other side, such that, as a whole, it is more likely than not that the alleged fact or conduct occurred. It does not mean that a greater number of Witnesses or documents is offered on one side or the other, but that the quality or significance of the evidence offered in support of one side is more convincing than the evidence in opposition.

Privacy: means that information related to a complaint will be shared with only a limited number of District employees who “need to know” in order to assist in the assessment, Investigation, and resolution of the report. All employees who are responsible for the District’s response to Title IX Prohibited Conduct receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), and the privacy of employee records will be protected in accordance with Georgia law and District policy.

Rebuttal Evidence: evidence presented to contradict other evidence in the Investigator’s Report, which could not have been reasonably anticipated by a Party to be relevant information at the time of the Investigation.

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Remedies: individualized measures implemented after a Written Determination is issued or as part of an Informal Resolution that are designed to restore or preserve equal access to District’s Programs or Activities, and may include Supportive Measures, but need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

Respondent/Student Respondent: a person currently enrolled at the time of the filing of the Formal Complaint and who is alleged to have engaged in Title IX Prohibited Conduct.

Retaliation: includes, but is not limited to, adverse action related to employment, academic opportunities, participation in District programs or activities, or similar punitive action taken against an individual because that person has made an Initial Report or Formal Complaint, responded to a Formal Complaint, testified, assisted, or participated or refused to participate in any manner in an Investigation or proceedings.

Sanctions: individualized measures implemented after a Written Determination is issued that may be disciplinary in nature, as described in Appendix B.

Sexual Assault: Any of the following acts:

- **Rape.** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
- **Sodomy.** Oral or anal sexual intercourse with another person forcibly and/or against that person’s will; OR not forcibly or against the person’s will (non-consensually) in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- **Sexual Assault with an Object.** To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person forcibly and/or against that person’s will; OR not forcibly or against the person’s will (non-consensually) in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- **Fondling.** The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification forcibly and/or against that person’s will (non-consensually); OR not forcibly or against the person’s will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Stalking: engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (i) fear for the person’s safety or the safety of others; or (ii) suffer substantial emotional distress. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Support Person: an individual that serves as an advisor to the Party after a Notice of Formal Complaint is issued, at the Party’s choosing, and that is permitted to be, but need not be, an attorney.

Supportive Measures: non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to District Programs or Activities without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or the District educational environment, or deter sexual harassment. Supportive measures may include extensions of

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deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

Title IX Coordinator: the individual at MCSD responsible for overseeing the District’s compliance with Title IX. Currently, the District has two: Chief of Student Services handles allegations of student violations and the Chief of Human Resources handles allegations involving MCSD personnel and vendors in any way.

Title IX Prohibited Conduct: the collective term used in this Title IX Procedure to refer to the conduct described in the definitions for Title IX Sexual Harassment, Sexual Assault, Dating Violence, Domestic/Family Violence, and Stalking.

Title IX Sexual Harassment: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it denies a person equal educational access.

Violence: the use of physical force to cause harm or injury.

Witness: a person asked to give information or a statement under this Title IX Procedure.

Written Determination Regarding Responsibility: the formal written notification issued by the Decision-Maker that includes: (i) identification of the allegations potentially constituting Title IX Prohibited Conduct; (ii) a description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews with Parties and Witnesses, site visits, methods used to gather other evidence; (iii) findings of fact; (iv) conclusions about whether the alleged Title IX Prohibited Conduct occurred, applying the definitions set forth in this Title IX Procedure to the facts; (v) the rationale for the result as to each allegation; (vi) any disciplinary Sanctions imposed on the Respondent; (vii) whether Remedies or Supportive Measures will be provided to the Complainant; and (viii) information about how to file an appeal.

Appendix B: Remedies and Sanctions

Following a determination of responsibility under this Title IX Grievance Procedure that the Student Respondent engaged in Title IX Prohibited Conduct directed at the Complainant, Remedies are provided to a Complainant. Remedies must be designed to restore or preserve access to the school’s educational Program or Activity. Remedies may include disciplinary Sanctions or other actions against a Student Respondent. They may include the same individualized services as those offered as Supportive Measures; however, Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

The Decision-Maker may consult with the Title IX Coordinator or other appropriate District administrators in crafting Remedies. The Decision-Maker will decide on the Remedies as the Decision-Maker deems appropriate for the particular case.

The Decision-Maker may provide remedies that will remediate a hostile environment for the Complainant and/or provide safety protections for the Complainant or for school community members.

A. REMEDIES

1. Remedies Relating to the Respondent

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Remedies relating to all Respondents could include the following restrictions:

- a. Directive not to contact (directly or indirectly) the Complainant
- b. Requiring that the Student Respondent not enroll in a class that the Complainant is enrolled in or teaching
- c. Limiting or denying access to all or parts of a school
- d. Limiting or denying participation in school programs, events or activities
- e. Limiting access to other students in private places

2. Additional Remedies for the Complainant

Additional Remedies for the Complainant will be directed by the Decision-Maker and/or Title IX Coordinator. Unless one of these Remedies affects the Student Respondent, these should remain confidential and should only be included in the Written Determination Regarding Responsibility for the Complainant.

- a. Academic or workplace accommodations
- b. Safety accommodations
- c. Other reasonable and appropriate accommodations
- d. Timeframe for Remedies

The Decision-Maker should indicate a timeframe for the Remedies (noting that it might be appropriate for some Remedies to have different timeframes; e.g., no private access to other students for two years.) Restrictions should be put in place for a certain amount of time, to achieve the appropriate remedy.

3. Implementation

The Title IX Coordinator is responsible for effective implementation of any Remedies under this Title IX Grievance Procedure. Remedies may be modified by the Title IX Coordinator as circumstances change over the course of a Complainant's or Student Respondent's student or work career at MCSD. The request for reconsideration may be submitted to the Title IX Coordinator, and the basis for such reconsideration will be limited to whether, given the changed circumstances, the Remedies are ones that could have been issued by reasonable persons. Upon request by a Party to reconsider a remedy, which if granted would impact the other Party, the Title IX Coordinator will provide notice and an opportunity to respond to the other Party. The Title IX Coordinator's decision on reconsideration will be provided in writing. The Title IX Coordinator maintains jurisdiction over the Remedies as the Parties move through the District.

B. SANCTIONS

Every violation of the MCSD Student Code of Conduct on sexual harassment and board policy is a serious matter and requires an appropriate Sanction issued after individualized review. A violation of the code of conduct and/or board policy could lead to expulsion for students. The Decision-Maker must

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impose Sanctions that reflect the seriousness of the incident and the harm caused to the Complainant and, as relevant, the school community.

The District offers the following guidance for disciplinary Sanctions for all violations of Title IX sexual harassment. The Decision-Maker may consult with the Title IX Coordinator or other appropriate District administrator in crafting Sanctions. The Decision-Maker will decide on the Sanctions as the Decision-Maker deems appropriate for the particular case.

1. Most Serious Offenses, Expulsion

While any violation of Title IX and the MCSD Student Code of Conduct is of concern and while any violation expulsion depending on the individual circumstances of the incident, the District considers the following offenses to be particularly egregious and likely warrant expulsion unless there are significant mitigating circumstances that overcome the presumption:

- a. Rape, Sodomy, Sexual Assault with an Object including an aggravating factor
- b. Domestic or Dating Violence with a serious injury
- c. Any violation including two or more aggravating factors

2. Aggravating Factors

The District considers the following factors to be aggravating factors that warrant increased Sanctions:

- a. The act is accomplished by Force, Violence, Duress, or Menace
- b. Inducing Incapacitation through involuntary ingestion or knowingly taking advantage of an Incapacitated person
- c. Past and repeated violations of MCSD policy by the Student Respondent, especially relating to Sexual Harassment and Prohibited Sexual Conduct as defined in the MCSD Student Code of Conduct
 - i. Decision-makers may consider past disciplinary outcomes for similar matters but are not required to give any weight to past outcomes.
- d. More than one perpetrator
- e. Acts committed in the context of an initiation into membership and/or hazing

3. Possible Mitigating Factors

- a. The Student Respondent has taken responsibility for their actions
- b. Other considerations that a reasonable decision-maker would rely on

4. Other Sanctions

Following a determination that expulsion is not appropriate, a Decision-Maker may consider other Sanctions. The offenses listed above are extremely serious and (in instances in which expulsion is not warranted), for Student Respondents, separation from the school environment for some period of time is expected.

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A Decision-Maker considers the aggravating factors listed above in when imposing Sanctions. When one or more aggravating factors are present, the Decision-Maker may impose a Sanction that includes a reflection of the seriousness of the aggravating factor(s).

Aside from expulsion, other Sanctions for Student Respondents could include the following:

- i. In-school Suspension for a period of up to ten (10) days;
- ii. Out-of-School Suspension from school for a period of up to ten (10) days; or
- iii. Out-of-School Suspension from school for a period of more than ten (10) days through a referral to the Student Disciplinary Tribunal, resulting in possible assignment to the alternative school.

Sanctions may also include required personalized education, counseling, a probationary period, and/or a removal from participation in any extracurricular school activities outside the classroom setting.

Appendix C: Timeframes for Title IX Procedure

The District will strive to complete this Title IX Procedure in a prompt manner. **Generally, the District will seek to complete the process within 60 calendar days from the filing of a Formal Complaint.** This 60-day guideline is based on the specific timeframes for each phase of the Title IX Procedure as set forth below, and accounts for unavoidable and reasonable delays, such as District breaks (when Parties and/or Witnesses may be unavailable) and extensions to the Parties granted for good cause. In addition, the Title IX regulations require that the Parties have two 10-day periods to review the evidence and respond to the Investigative Report, which necessarily extend the total time for resolution of a matter under this Title IX Procedure. In any event, the District will not compromise a thorough and fair process in order to meet the 60-day timeframe from the filing of a Formal Complaint to a decision. If any Party chooses to appeal the decision, the timeline will contain an additional 15-day period to submit, respond to, and decide the appeal. If any deadline under the guidelines set forth below falls on a weekend or holiday, there will be an automatic extension to the next school in-session day.

If the Parties elect to engage in an Informal Resolution, the timeframes will be suspended during the pendency of that process.

Extensions are only granted for good cause. A request for an extension must be made, in writing and with reasons provided, to the Title IX Coordinator.

The timeframe guidelines for each phase of the Title IX Procedure after the filing of a Formal Complaint are as follows:

1. The Title IX Coordinator will endeavor to determine whether to proceed with a Written Notice of Formal Complaint or Dismiss the Formal Complaint as per these procedures within **5 calendar days** of receiving a Formal Complaint signed by the Complainant. In the situation where the Complainant declines to file a Formal Complaint, and the Title IX Coordinator determines that proceeding over the wishes of the Complainant is not clearly unreasonable in light of the known circumstances, the Title IX Coordinator will sign the

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Formal Complaint and issue the Written Notice of Formal Complaint within 5 calendar days of that determination.

2. The Investigator will endeavor to complete the overall Investigation process within **20 calendar days** of the date the Written Notice of Formal Complaint is sent to the Parties. Both Parties have the opportunity to present evidence and identify Witnesses during this timeframe. This timeframe may be extended in complex matters or matters with multiple Witnesses to give the Investigator enough time to gather relevant evidence and schedule Witness interviews.
 - As required by the Title IX regulations, after the Investigator has concluded the collection of evidence, the Parties will be given 10 calendar days to review the evidence and provide a response, which first review timeframe falls within the Investigation timeframe of 20 calendar days.
 - After the Investigator has received the Parties' response to the evidence, the Investigator shall deliver his or her Investigative Report to the Title IX Coordinator and shall send to the parties. This timeframe may be extended, however, if the Parties' responses identify new sources of evidence that require additional Investigation.
3. As required by the Title IX regulations, the Parties will be given **10 calendar days** to review and provide a response to the Investigative Report.
4. The Title IX Coordinator will endeavor to issue either a Notice of Dismissal or Notice of Charge within **5 calendar days** of receipt of the Parties' responses to the Investigative Report.
5. Within **10 calendar days** of the issuance of a Notice of Charge and the receipt of the Investigator's Report, the Decision-Maker will endeavor to issue the Written Determination Regarding Responsibility.
6. Any Party wishing to appeal the Written Determination Regarding Responsibility must do so within **10 calendar days** of the issuance of the Written Determination Regarding Responsibility. The other Party will have 10 calendar days to respond to an appeal.
7. The Appeal Officer will endeavor to issue an Appeal Outcome within **5 calendar days** after any response to an appeal is received.

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