

# Milwaukee Public Schools Title IX Grievance Procedures

Title IX of the Education Amendments of 1972 ("Title IX") prohibits discrimination on the basis of sex by any institution receiving federal funds in the United States. Milwaukee Public Schools does not discriminate on the basis of sex in its enrollment practices, in its employment practices, or in its educational programs or activities. All allegations of sexual misconduct will be taken seriously by the District and investigated accordingly. Allegations of sex discrimination shall be handled in accordance with the following Title IX Grievance Procedures set forth by the District and pursuant to federal law.

## Purpose

Milwaukee Public Schools has adopted grievance procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

## Definitions

**Complainant** means:

- 1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part; or
- 2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part and who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.

**Complaint** means an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX.

**Confidential employee** means:

- 1) An employee of a recipient whose communications are privileged or confidential under federal or state law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or
- 2) An employee of a recipient whom the recipient has designated as confidential for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services.

**Parental status** means the status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

- 1) A biological parent;
- 2) An adoptive parent;
- 3) A foster parent;
- 4) A stepparent;
- 5) A legal custodian or guardian;
- 6) In loco parentis with respect to such a person; or
- 7) Actively seeking legal custody, guardianship, visitation, or adoption of such a person.

**Party** means a complainant or respondent.

**Pregnancy or related conditions** means:

- 1) Pregnancy, childbirth, termination of pregnancy, or lactation;
- 2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation;  
or
- 3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

**Recipient** means any state or political subdivision thereof, or any instrumentality of a state or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.

**Relevant** means related to the allegations of sex discrimination under investigation as part of the grievance procedures under § 106.45, and if applicable § 106.46. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

**Remedies** means measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the recipient's education program or activity after a recipient determines that sex discrimination occurred.

**Respondent** means a person who is alleged to have violated the recipient's prohibition on sex discrimination.

**Retaliation** means intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid,

benefit, or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

**Sex-based harassment** is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in § 106.10, that is:

- 1) Quid pro quo harassment. An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation **in** unwelcome sexual conduct;
- 2) Hostile environment harassment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a factspecific inquiry that includes consideration of the following:
  - i. The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
  - ii. The type, frequency, and duration of the conduct;
  - iii. The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
  - iv. The location of the conduct and the context in which the conduct occurred; and
  - v. Other sex-based harassment in the recipient's education program or activity; or
- 3) Specific offenses.
  - i. Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
  - ii. Dating violence meaning violence committed by a person:
    - (A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
    - (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
      1. The length of the relationship;
      2. The type of relationship; and
      3. The frequency of interaction between the persons involved in the relationship;

- iii. Domestic violence meaning felony or misdemeanor crimes committed by a person who:
  - (A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;
  - (B) Is cohabitating or has cohabitated with the victim as a spouse or intimate partner;
  - (C) Shares a child in common with the victim; or
  - (D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction;
- iv. Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - (A) Fear for the person's safety or the safety of others; or
  - (B) Suffer substantial emotional distress.

**Supportive measures** are individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent.

## Procedural Requirements

### **Confidentiality**

Confidentiality will be maintained to the greatest extent possible. Any information gathered during an informal procedure may be used during a formal procedure, if initiated. While there can be no assurance of complete confidentiality, complaints under this procedure will be treated as sensitive information not to be shared with others except in limited circumstances.

Milwaukee Public Schools will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consulting with their family members, confidential resources, or advisors; or otherwise preparing for or participating in the grievance procedures. The parties cannot engage in retaliation, including against witnesses.

The District will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Examples of exceptions to maintaining confidentiality include:

- Information the law requires to be reported.
- Information imparted to others in supervisory positions in order to further an investigation or halt a discriminatory practice.
- Information given to the respondent in order to have sufficient information to respond to the allegations.

The District will take all reasonable steps to investigate and respond to a complaint consistent with a request by the complaining party not to disclose his/her name. However, such requests for confidentiality may limit the District's ability to adequately investigate and respond to the allegations raised in the complaint.

Requests for confidentiality will be evaluated in the context of the District's responsibility to provide a safe and nondiscriminatory environment for all students, and the request will be weighed against whatever factors the school deems relevant, including, without limitation:

- The complainant's age.
- Circumstances that suggest there is an increased risk of future acts of harassment and/or sexual violence under similar circumstances.
- Whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

All parties to a complaint, including the complainant, respondent, and witnesses, have privacy interests and therefore, all parties should be cautioned not to divulge or publicize the nature of the proceedings or the identity of those involved outside the scope of the investigation.

## **Supportive Measures**

Milwaukee Public Schools will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person's access to the District's education program or activity or provide support during the District's Title IX grievance procedures.

For complaints of sex-based harassment, these supportive measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the school property; restrictions on contact applied to one or more parties; and changes in class, work, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative.

Supportive measures will be made available to involved parties in an equitable manner once the District knows about sex discrimination or sexual harassment regardless of whether a complaint investigation is requested under Title IX.

Supportive measures can be options to avoid contact or mutual restrictions on contact between parties, such as changes to seating/classes/student groupings/work locations, safety plans, and safe paths of travel; increased monitoring of certain areas of campus to prevent reoccurrence and other similar measures; training and educational materials; academic supports, extensions of deadlines, other course-related adjustments, and modifications of work or class schedules; and counseling or health/mental health supports. If, after an individualized safety and risk analysis, it is determined there is an immediate threat to the physical health or safety of an individual arising from the allegations, removal of the accused may be justified. A written notice will be provided with an opportunity to challenge the decision.

Removals may not change rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Education Act.

## **Retaliation**

- A. Students, employees, or parents who make complaints in good faith shall be free from retaliation, coercion, and reprisal in seeking resolution of their complaint. Furthermore, persons acting as witnesses to a complaint, in good faith, shall be free from retaliation.
- B. Retaliation is a separate violation distinct from the initial underlying harassment or discrimination allegation. Claims of retaliation, submitted in good faith and in writing to the school-based Title IX Administrator or Title IX Coordinator, shall be investigated pursuant to these procedures. Individuals who engage in retaliation will be subject to discipline, regardless of whether there has been a finding of cause for the underlying complaint.
- C. Peer retaliation, which is defined as retaliation by one student against another student, is also prohibited.

D. Free speech does not constitute retaliation; charging someone with making a materially false statement does not constitute retaliation.

E. A complaint can be filed for retaliation.

## **Time Limits**

The District has established the following time frames for the major stages of the grievance procedures.

- A. **Reporting** - There is no time limit on providing reports or a complaint under this procedure. However, if the Respondent is no longer subject to the District's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.
- B. **Resolution Timeline** - The District will make a good faith effort to complete the resolution process, which begins when a complaint is received, within ninety (90) days, including any appeal. This time frame can be extended as necessary by the Title IX Coordinator. A party not satisfied with a resolution or outcome of an investigation may submit a written appeal within ten (10) days to the District Title IX Coordinator.
- C. Milwaukee Public Schools has also established the following process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay.
- a. Individuals may contact the Title IX Coordinator to request an extension.
  - b. The Title IX Coordinator will provide written communication to the complainant and respondent detailing the reason for the request, whether it is being honored, and a timeline for the extension.

## **Evidentiary Standard**

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

- Evidence that is protected under a privilege as recognized by federal or state law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the recipient obtains that party's or witness's voluntary, written consent for use in the District's grievance procedures.

- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

## Grievance Process

### Knowledge

Once the District has knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity, it must respond promptly and effectively. Misconduct witnessed by any employee serves as knowledge. Indirect knowledge from sources such as media, online media, and video serves as knowledge.

- A. Milwaukee Public Schools will treat complainants and respondents equitably.
- B. Milwaukee Public Schools requires that any Title IX Coordinator, investigator, or decision maker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A decision maker may be the same person as the Title IX Coordinator or investigator.
- C. Milwaukee Public Schools presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.
- D. Milwaukee Public Schools will objectively evaluate all evidence that is relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that Milwaukee Public Schools investigate and make a determination about alleged discrimination under Title IX.

1. A complainant, which includes:
  - a. a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination in the District under Title IX; or
  - b. a person other than a student or employee of the District who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in a Milwaukee Public Schools education program or activity.
2. A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant.
3. Milwaukee Public Schools Title IX Coordinator.

Note that a person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 C.F.R. § 106.44(f)(1)(v).

With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint:

1. Any student or employee of the District; or
2. Any person other than a student or employee who was participating or attempting to participate in the District's education program or activity at the time of the alleged sex discrimination

The District may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

Any person (including a person who is not claiming to have been personally harmed/victimized by the alleged discrimination) may report a concern or allegation regarding prohibited sex discrimination (including sexual harassment) to the District. If a report is filed, the District will inform the alleged target of the complaint process and the support available. Reports of sexual harassment can be made directly to a designated Title IX administrator or to any school employee, regardless of their job description. Reports of sexual misconduct will be initially processed by school administration. Once the report has been made, the designated Title IX administrator will offer supportive measures and inform the complainant of the complaint process. Reports of sexual harassment under Title IX are distinct and separate from reports made to law enforcement agencies and violations outlined in state and federal statutes. All reports and/or complaints may be submitted as follows.

**In person to:**

- Title IX Coordinator in the Department of Student Services, Room 133, 5225 W. Vliet Street, Milwaukee, WI 53208
- Designated Title IX administrator at each school

**Online:** Submit a complaint using the following link: [MPS Title IX Complaint Form](#). Such a report may be made at any time (including during non-business hours). Please note: Reports are not reviewed after hours, on weekends, or during school holidays or breaks.

A hard copy of the complaint form can be obtained from the designated Title IX administrator or the District website. The Complaint Form shall contain information that describes the conduct that constitutes sex discrimination, including sexual harassment and sexual violence, and identify

with reasonable particularity the respondent(s) and any witnesses to the alleged conduct. The Complaint Form should also contain the complainant's physical or digital signature that indicates that the complainant is the person filing the complaint.

### **Notice of Allegations**

Upon initiation of the District's Title IX grievance procedures, Milwaukee Public Schools will notify the parties of the following:

- A. Milwaukee Public Schools' Title IX grievance procedures and any informal resolution process
- B. Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s)
- C. Information explaining that retaliation is prohibited
- D. The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. If the District provides a description of the evidence, the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

If, in the course of an investigation, Milwaukee Public Schools decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided or that are included in a complaint that is consolidated, the District will notify the parties of the additional allegations.

### **Dismissal of a Complaint**

Milwaukee Public Schools may dismiss a complaint of sex discrimination if:

- The District is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in the District's education program or activity and is not employed by the District;
- The complainant voluntarily withdraws any or all of the allegations in the complaint, or the Title IX Coordinator declines to initiate a complaint and the District determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- The District determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, the District must make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, the District will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the District will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

Milwaukee Public Schools will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then the District will also notify the respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Title IX Coordinator, investigator, or decision maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

If the dismissal is appealed, the District will:

- Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Implement appeal procedures equally for the parties;
- Ensure that the decision maker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;<sup>9</sup>
- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result.

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

- Offer supportive measures to the complainant as appropriate;
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within the Milwaukee Public Schools education program or activity.

## **Investigation**

A written **Notice of Allegation/Investigation** stating that a formal investigation is in progress will be sent to all parties involved, including witnesses, once the investigation has begun.

If the investigator conducts interviews, the parties will be provided time to prepare and will receive notice of the time/date/location/participants/purpose of the interviews.

Milwaukee Public Schools will provide for adequate, reliable, and impartial investigation of complaints.

The burden is on the District—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

Milwaukee Public Schools will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible.

Milwaukee Public Schools will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

Milwaukee Public Schools will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

- A. The District will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence. [If [ABC School] provides a description of the evidence: [ABC School] will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.
- B. The District will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence.
- C. The District will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

The parties will have an equal opportunity to review the evidence gathered over a period of 10 days and will have opportunities to ask for additional relevant questions to be considered and to provide more evidence before the investigation summary is provided to the parties at the same time.

Information protected by legal privilege will not be used in the investigation unless the party holding the privilege waives it.

Milwaukee Public Schools will provide a process that enables the decision maker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination. This process will include:

1. The Title IX decision maker will contact the party to schedule a follow-up interview.
2. The decision maker will provide written notification of the date and time of the meeting to the parties.

### **Determination Whether Sex Discrimination Occurred**

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the District will:

- A. Review the evidence provided by all parties and make a determination of responsibility after the investigation using a preponderance of the evidence standard of proof or “more likely than not” that it occurred.
- B. Use the preponderance of the evidence standard (more likely than not) when investigating and resolving a complaint under these procedures to determine whether sex discrimination occurred. The standard of proof requires the decision maker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
- C. Notify the parties in writing of the determination whether sex discrimination occurred under Title IX, including the rationale for such determination and the procedures and permissible bases for the complainant and respondent to appeal, if applicable.
- D. Not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.
- E. If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
  - a. Coordinate the provision and implementation of remedies to a complainant and other people the District identifies as having had equal access to Milwaukee Public Schools’ education program or activity limited or denied by sex discrimination;
  - b. Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
  - c. Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within Milwaukee Public Schools education program or activity.
- F. Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent.
- G. Not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

## **Disciplinary Sanctions and Remedies**

Following a determination that sex-based harassment occurred, Milwaukee Public Schools may impose disciplinary sanctions, which may range from intervention to expulsion as detailed in the school/classroom code of conduct for students. For employees, the District may impose disciplinary action up to and including termination. The District may also provide remedies, which may include supportive counseling, transfer to a new school or work location, and mandated corrective action training.