MERCHANTVILLE BOARD OF EDUCATION 130 South Centre Street Merchantville, New Jersey 08109	FILE CODE 2224.1R Proposed: Adopted: 04/08/2024 Revised: Reviewed:

TITLE IX – SEX BASED DISCRIMINATION PROCEDURES AND GRIEVANCE PROCESS

GENERAL STATEMENT

The Title IX sexual harassment procedures and grievance process for complaints prescribed in this regulation apply only when a report includes allegations of sexual harassment subject to Title IX regulations. (34 CFR 106.44, 106.45)

All other reports or complaints of discrimination or retaliation shall follow the complaint procedures established in policy 2224 Nondiscrimination/Affirmative Action.

STAFF RESPONSIBLE

The following chart lists the staff members responsible for the implementation of the regulation and summarizes their responsibilities:

Position	Summary of Main Responsibilities
Chief school administrator	• General policy procedure oversight within the district • Reporting to the board • Notification of due process and appeal rights as well as name and contact information for Title IX Coordinator
Board of education	• General oversight of the chief school administrator • Board hearings in closed session when required by statute, code or policy
Title IX coordinator	• Oversight of the Title IX policy and procedures: investigation, informal and formal complaint process; supportive measures; required notifications, appeals • Appoints the decision-maker(s) • Appoints the investigator
Investigator	• Investigates allegations to establish burden of proof
Decision-maker	• Determines based on the evidence if the allegations qualify as Title IX sexual harassment • Composes the written determination of responsibility and distributes it to the parties within the stated time frame
Director of Special Education	• Consults with the Title IX coordinator on all cases that involve classified students and students with special education plans, including IEPs and 504 plans

DEFINITIONS

“Education program or activity" includes locations, events, or circumstances over which the district exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to the district’s Title IX coordinator or any district official who has the authority to institute corrective measures on behalf of the district, or to any employee of an elementary and secondary school, other than the respondent. “Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in § 106.8(a).

“Exculpatory evidence” means evidence tending to exonerate the accused or helps to establish their innocence.

“Inculpatory” evidence means evidence tending to incriminate the accused or indicate their guilt.

“Formal complaint” means a document filed by a complainant or signed by the Title IX coordinator alleging Title IX sexual harassment and requesting that the district investigate the allegation. The authority for the Title IX coordinator to sign a formal complaint does not make the Title IX coordinator the complainant or other party during the grievance process. The phrase “document filed by a complainant” refers to a document or electronic submission that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

“Retaliation” shall mean actions including, but not limited to, intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX or its regulated regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX and its related regulations. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.. The following actions shall <u>not</u> constitute retaliation:

A. An individual exercising free speech under the rights protected by the First Amendment;

B. The assignment of consequences consistent with board policy and the code of student conduct when an individual makes a materially false statement in bad faith in an investigation. The fact that the charges of discrimination were unfounded or unsubstantiated shall not be the sole reason to conclude that any party made a materially false statement in bad faith.

“Supportive measures” are 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. Supportive measures shall be designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or to deter sexual harassment. Supportive measures may include, but shall not be limited to:

A. Counseling;

B. Extensions of deadlines or other course-related adjustments;

C. Modifications of work or class schedules;

D. Campus escort services;

E. Mutual restrictions on contact between the parties;

F. Changes in work locations or school of attendance;

G. Leaves of absence;

H. Increased security;

I. Monitoring of certain areas of the campus;

J. Referral to domestic violence or rape crisis programs;

K. Referral to community health resources including counseling resources.

Supportive measures may also include assessments or evaluations to determine eligibility for special education or related services, or the need to review an individualized education program (IEP) or Section 504 service agreement based on a student's behavior. This could include, but is not limited to, a manifestation determination or functional behavioral assessment (FBA), in accordance with applicable law, regulations and board policy 6171.4 Special Education.

"Title IX sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

A. A district employee conditioning the provision of an aid, benefit, or district service on an individual's participation in unwelcome sexual conduct;

B. Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to a district education program or activity;

C. Sexual assault, dating violence, domestic violence or stalking:

1. Dating Violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship is determined by the following factors:

    a. Length of relationship;
    b. Type of relationship;
    c. Frequency of interaction between the persons involved in the relationship.

2. Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving federal funding, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction;

3. Sexual assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;

4. Stalking, under Title IX means stalking on the basis of sex, for example when the stalker desires to date a victim. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to either:

    a. Fear for their safety or the safety of others;
    b. Suffer substantial emotional distress.

Such conduct must have taken place during a district education program or activity and against a person in the United States to qualify as sexual harassment subject to Title IX regulations. An education program or activity includes the locations, events or circumstances over which the district exercises substantial control over both the respondent and the context in which the harassment occurs.

"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

<u>Reporting</u> <u>Sexual</u> <u>Harassment</u>

A. Any person, whether the alleged victim or not, may report Title IX sexual harassment by any of the following:

1. Using the discrimination/sexual harassment report form; or
2. Making a general report verbally or in writing to the building principal; or
3. Making a general report verbally or in writing to a staff member; or
4. Using the contact information listed for the Title IX coordinator and making a verbal or written report; or
5. Any other means that results in the Title IX coordinator receiving the person's verbal or written report.

B. When Title IX sexual harassment is reported to a school staff member, the school staff member shall immediately notify the building principal.

C. A report may be made at any time, including during nonbusiness hours. Verbal reports shall be documented by the Title IX coordinator or employee receiving the report using the discrimination/sexual harassment report form.

D. The parents/guardians of a student who is the complainant, the respondent, or other individual relating to a complaint, have the right to act on behalf of the student at any time and report Title IX sexual harassment and all other conduct violations on the basis of sex including but not limited to sexual assault, dating violence, domestic violence or stalking.

E. An adult student who is the complainant, the respondent, or other individual relating to a complaint, shall have the right to act on their own behalf at any time and report Title IX sexual harassment and all other conduct violations on the basis of sex including but not limited to sexual assault, dating violence, domestic violence or stalking.

Initial Investigation

When the district has actual knowledge of Title IX sexual harassment, the district is required to respond promptly and in a manner that is not deliberately indifferent, meaning not clearly unreasonable in light of the known circumstances.

A. All sexual harassment reports and complaints received by the building principal or other school staff member shall be promptly directed to the Title IX coordinator, in accordance with board policy. The Title IX coordinator shall use the report form to gather additional information from the reporter and/or other parties identified in the report. Using the information gathered, the Title IX coordinator shall determine if the allegations meet the definition and parameters for Title IX sexual harassment.

B. The Title IX coordinator shall promptly contact the complainant regarding the report to gather additional information as necessary, and to discuss the availability of supportive measures. The Title IX coordinator shall consider the complainant’s wishes with respect to supportive measures.

C. The Title IX coordinator shall initially assess whether the reported conduct:

1. Poses an immediate threat to the physical health or safety of the complainant or any other individual;
2. May meet the definition of Title IX sexual harassment;
3. Occurred in a district program or activity sponsored by the district and against a person in the United States;
4. Involves other board policies or code of student conduct violations;
5. Involves a student identified as a student with a disability under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act (see board policy 6171.4 Special Education);

D. If the result of this initial assessment determines that none of the allegations fall within the scope of Title IX sexual harassment, but the matter merits review and possible action under the code of student conduct and other board policies, then the Title IX coordinator shall redirect the report to the appropriate administrator to address the allegations;

E. If the result of the initial assessment determines that the allegations may constitute Title IX sexual harassment, the Title IX coordinator shall promptly explain to the complainant the process for filing a formal complaint and inform the complainant of the continued availability of supportive measures with or without the filing of a formal complaint;

F. The Title IX coordinator shall contact the parents/guardians and provide them with information regarding the report and Title IX sexual harassment procedures and grievance process for formal complaints;.

G. The Title IX coordinator shall contact the adult student and provide them with information regarding the report and Title IX sexual harassment procedures and grievance process for formal complaints;

H. If the complainant, school staff or others with professional knowledge relating to the complainant's health and well-being indicate that notifying the parents/guardians could cause serious harm to the health or well-being of the complainant or other person(s), the Title IX coordinator will determine, in consultation with such individuals and upon advice of legal counsel, whether to withhold or delay notification of the report from the complainant's parents/guardians;

I. The Title IX coordinator shall also determine what supportive measures may be offered to the respondent;

J. If either party is an identified student with a disability, or thought to be disabled, the Title IX coordinator shall contact the director of special education to coordinate the required actions in accordance with board policy 6171.4 Special Education;

K. Confidentiality regarding the supportive measures offered and the identity of the following individuals shall be maintained, except as may be permitted by law or regulations relating to the conduct of any investigation (20 U.S.C. Sec. 1232g; 34 CFR Parts 99, 106):

1. Individuals making a report or formal complaint;
2. Complainant(s);
3. Respondent(s);
4. Witnesses;

L. The district shall treat complainants and respondents equitably by:

1. Offering supportive measures to the complainant and may offer such measures to the respondent;
2. Following the grievance process for formal complaints before imposing disciplinary sanctions or other actions that are not supportive measures on the respondent.

Complaint Procedures

Step 1 – Formal Complaint

A. The Title IX coordinator shall initiate the grievance process for formal complaints when a complainant or the complainant's parent/guardian files a formal complaint. The Title IX coordinator is also authorized to initiate this process despite a complainant's wishes when actions limited to supportive measures are not a sufficient response to alleged behavior, or when a formal complaint process is necessary to investigate and address the situation adequately. For example, if the respondent is an employee, or if further investigation is needed to assess the extent of the behavior and impact on others, it may be reasonable to initiate the formal complaint process. Only the Title IX coordinator is authorized to initiate the formal complaint process despite a complainant's wishes, but the Title IX coordinator may consult with the school attorney and other district officials in making this decision;

B. The complainant or the Title IX coordinator shall use the designated section of the discrimination/sexual harassment report form to file or sign a formal complaint;

C. The Title IX coordinator shall assess whether the investigation should be conducted by the building principal, another district employee, the Title IX coordinator or an attorney and shall promptly assign the investigation to that individual;

D. The Title IX coordinator, investigator, decision-maker, or any individual designated to facilitate the informal resolution process, each must have completed the required training and shall not have a conflict of interest or bias for or against an individual complainant or respondent, or for or against complainants or respondents in general;

E. The respondent shall be presumed not responsible for the alleged conduct until a written determination regarding responsibility has been made at the conclusion of the grievance process for formal complaints;

F. Notice Requirements:

Upon receipt of a formal complaint, or when the Title IX coordinator signs a formal complaint to initiate the grievance process for formal complaints, the Title IX coordinator shall provide written notice to all known parties, and the parents/guardians of known parties, where applicable, providing the following information:

1. Notice of the district's grievance process for formal complaints and any informal resolution process that may be available;
2. Notice of the allegations potentially constituting Title IX sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:

    a. The identity of the parties involved, if known;
    b. The conduct allegedly constituting sexual harassment;
    c. The date and location of the alleged incident(s), if known;

3. A statement that a written determination regarding responsibility shall be made at the conclusion of the grievance process for formal complaints and, until that time, the respondent is presumed not responsible for the alleged conduct;
4. Notice that parties may have an advisor of their choice, who may be, but is not required to be, an attorney. The advisor may inspect and review evidence;
5. Notice of provisions in board policy and the district's Code of Student Conduct that prohibits knowingly making false statements or knowingly submitting false information to school officials in connection with reports of misconduct or discrimination complaints;
6. Notice to all known parties of any additional allegations that the district decides to investigate during the course of the investigation.

Step 2 – Informal Resolution Process

The informal resolution process cannot be offered or used to facilitate a resolution for any formal complaint where the allegations state that an employee sexually harassed a student.

At any time after a formal complaint has been filed, but prior to reaching a determination of responsibility, if the Title IX coordinator believes the circumstances are appropriate, the Title IX coordinator may offer the parties the opportunity to participate in an informal resolution process, which does not involve a full investigation and adjudication of the Title IX sexual harassment complaint.

The district may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal Title IX sexual harassment complaints. Similarly, a district may not require the parties to participate in an informal resolution process.

Informal resolutions can take many forms, depending on the particular case. Examples include, but are not limited to, mediation, facilitated discussions between the parties, restorative practices, acknowledgment of responsibility by a respondent, apologies, a requirement to engage in specific services, or supportive measures.

When offering an informal resolution process, the Title IX coordinator shall:

A. Provide the parties a written notice disclosing the following:

1. The allegations;
2. The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
3. That at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process for formal complaints;
4. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

B. Obtain the parties' voluntary, written consent to the informal resolution process. As part of the consent process, all parties shall be informed of the rights being waived by agreeing to the informal resolution process, and shall acknowledge such agreement in writing.

C. The informal resolution process shall be conducted within ten (10) school days of the parties' signed agreement for the informal resolution process;

D. If the matter is resolved to the satisfaction of the parties, the district employee facilitating the informal resolution process shall document the nature of the complaint and the proposed resolution of the matter, have both parties sign the documentation and receive a copy, and forward it to the Title IX coordinator;

E. Within twenty (20) school days after the complaint is resolved, the Title IX coordinator shall contact the complainant to determine if the resolution was effective and to monitor the agreed upon remedies;

F. The Title IX coordinator shall document the informal resolution process, responses from all parties, and an explanation of why the district's response was not deliberately indifferent to the reported complaint of sexual harassment.

*If Step 2 Informal Resolution Process results in the final resolution of the complaint, the following steps are not applicable.

Step 3 – Investigation

The designated investigator, if other than the Title IX coordinator, shall work with the Title IX coordinator to assess the scope of the investigation, who needs to be interviewed and what records or evidence may be relevant to the investigation. The investigation stage shall be concluded within 30 school days.

When investigating a formal complaint, the investigator shall:

A. Bear the burden of proof and gather evidence and conduct interviews sufficient to reach a written determination;

B. Not access, consider, disclose or otherwise use a party's records which are protected by legal privilege during the process of gathering evidence, unless the district has obtained the voluntary, written consent of the party, or the party's parent/guardian when legally required. Such records include but are not limited to records 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 providing treatment to the party (Safe2Say Something Procedures);

C. Objectively evaluate all available evidence, including inculpatory and exculpatory evidence;

D. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

E. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. The district may request that a nondisclosure agreement be signed by the parties and their advisor(s), if any, stating that they will not disseminate or disclose evidence and documents exchanged in the investigation;

F. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to have an advisor of the party's choice accompany the party to

any interview or other meeting related to the grievance procedure. The district may establish restrictions, applicable to both parties, regarding the extent to which the advisor may participate;

G. Provide written notice to any party whose participation is invited or expected during the investigation process with the following information, in sufficient time for the party to prepare to participate:

1. Date;
2. Time;
3. Location;
4. Participants;
5. Purpose of all investigative interviews or other meetings;

H. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations, including evidence the district does not intend to rely on to reach a determination regarding responsibility and any inculpatory and exculpatory evidence, whether obtained from a party or other source;

I. If at any point the investigation expands to include additional allegations that were not included in the initial notice provided upon initiation of the grievance process for formal complaints, the investigator shall alert the Title IX coordinator. The Title IX coordinator shall provide written notice of the new allegations to the known parties;

J. Prior to the completion of the investigative report, the investigator shall:

1. Send to each party and the party's advisor, if any, the evidence subject to inspection and review in electronic or hard copy format;
2. Provide the parties at least ten (10) school days following receipt of the evidence to submit a written response;
3. Consider the written response prior to drafting the investigative report;

K. The investigator shall draft an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under section 106.45(b) of the Title IX regulations or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response;

L. If the investigation reveals that the conduct being investigated may involve a violation of criminal law, the investigator shall promptly notify the Title IX coordinator, who shall promptly inform the chief school administrator and law enforcement authorities about the allegations and make any additional required reports, in accordance with law, regulations and board policy;

M. The obligation to conduct this investigation shall not be negated by the fact that a criminal or child protective services investigation of the allegations is pending or has been concluded. The investigator should coordinate with any other ongoing investigations of the allegations, including agreeing to request for a delay in fulfilling the district's investigative responsibilities during the fact-finding portion of a criminal or child protective services investigation. Such delays shall not extend beyond the time necessary to prevent interference with or disruption of the criminal or child protective services investigation and the reason for such delay shall be documented by the investigator;

N. In the course of an investigation, it is possible that conduct other than, or in addition to, Title IX sexual harassment may be identified as part of the same incident or set of circumstances. The fact that there may be Title IX sexual harassment involved does not preclude the district from addressing other identified violations of the code of student conduct or board policy. If such other conduct is being investigated and addressed together with Title IX sexual harassment as part of the Title IX grievance process for formal complaints, disciplinary action normally should not be imposed until the completion of the Title IX grievance process for formal complaints. A decision whether and when to take such action should be made in consultation with the school attorney.

Step 4 – Written Determination and District Action

A. To avoid any conflict of interest or bias, the decision-maker cannot be the same person as the Title IX coordinator or the investigator. The responsibility as the decision-maker for complaints of Title IX sexual harassment shall generally be designated to the Chief School Administrator;

B. If the designated decision-maker has a conflict of interest or bias, or is a party in the formal complaint process, they shall disclose the conflict and the Title IX coordinator shall designate another individual to serve as the decision-maker;

C. A written determination of responsibility (written determination) must not be finalized less than ten (10) days after the investigator completes the investigative report and provides it to all parties. Before the decision-maker reaches a determination regarding responsibility, the decision-maker shall afford each party the opportunity to submit written, relevant questions that a party wants to be asked of any party or witness, shall provide each party with the answers, and shall allow for additional, limited follow-up questions from each party;

D. Relevant questions for a party or witness must be submitted by each party within five (5) school days following receipt of the investigative report;

E. Follow-up questions must be submitted by each party within five (5) school days of being provided the answers to the initial questions;

F. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant as part of the questions and responses, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent;

G. The decision-maker shall explain to the party proposing the questions about any decision to exclude a question as not relevant;

H. The decision-maker must issue a written determination for the conduct alleged in formal complaints. To reach this determination, the decision-maker shall apply the preponderance of the evidence standard, meaning that the party bearing the burden of proof must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not;

*[**Note:** Districts may consult with their school attorney and decide to use the "clear and convincing evidence" standard, as permitted by the federal regulations, in place of the "preponderance of the evidence" standard. However, the legal disadvantages of this should be carefully considered with the school attorney. The clear and convincing evidence standard means that the party bearing the burden of proof must show that the truth of the allegations is highly probable.]*

I. In considering evidence, the decision-maker shall ensure credibility determinations are not based on an individual's status as a complainant, respondent or witness;

J. After considering all relevant evidence, the decision-maker shall issue a written determination that includes:

1. Identification of the allegations potentially constituting Title IX sexual harassment;
2. A description of the procedural steps taken from the receipt or signing of the formal complaint through the written determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and, if relevant, hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the district's code of student conduct or board policies to the facts;
5. A statement of, and rationale for, the result as to each allegation, including:

    a. Determination regarding responsibility;
    b. Disciplinary sanctions;

c. Remedies designed to restore or preserve equal access to the district's education program or activity that will be provided by the district to the complainant. Such remedies may be punitive or disciplinary and need not avoid burdening the respondent;

6. The procedures, deadline and permissible bases for the complainant and respondent to appeal;

K. The written determination shall be provided to the parties simultaneously. The determination becomes final either:

1. On the date that the district provides the parties with the written decision of the result of the appeal, if an appeal is filed; or
2. If an appeal is not filed, on the date on which an appeal would no longer be considered timely, in accordance with the timeframe established for appeals in this procedure;

The Title IX coordinator shall be responsible to ensure that any remedies are implemented by the appropriate district officials and for following up as needed to assess the effectiveness of such remedies. Disciplinary actions shall be consistent with the code of student conduct, board policies and administrative regulations, district procedures, applicable collective bargaining agreements, and state and federal laws and regulations, including specific requirements and provisions for students with disabilities.

Disciplinary Procedures When Reports Allege Title IX Sexual Harassment

When reports allege Title IX sexual harassment, disciplinary sanctions may not be imposed until the completion of the grievance process for formal complaints. The district shall presume that the respondent is not responsible for the alleged conduct until a determination has been made at the completion of the grievance process for formal complaints.

When an emergency removal, as described below, is warranted to address an immediate threat to the physical health or safety of an individual, and it is not feasible to continue educational services remotely or in an alternative setting, the normal procedures for suspension and expulsion shall be conducted to accomplish the removal, including specific provisions to address a student with a disability where applicable (see board policy 5114 Suspension and Expulsion).

When an emergency removal is not required, disciplinary sanctions will be considered in the course of the Title IX grievance process for formal complaints. Following the issuance of the written determination and any applicable appeal, any disciplinary action specified in the written determination or appeal decision shall be implemented in accordance with the normal procedures for suspensions, expulsions or other disciplinary actions, including specific provisions to address a student with a disability where applicable.

Supportive Measures

All supportive measures provided by the district shall remain confidential, to the extent that maintaining such confidentiality would not impair the ability of the district to provide the supportive measures (34 CFR 106.44).

When any party is an identified student with a disability, or thought to be a student with a disability, the Title IX coordinator shall notify the director of special education and coordinate to determine whether additional steps must be taken as supportive measures for the party while the Title IX procedures are implemented. Such measures may include, but are not limited to, conducting a manifestation determination, functional behavior assessment or other assessment or evaluation, in accordance with applicable law, regulations or board policy. Functional behavior assessments must be conducted when a student's behavior interferes with the student's learning or the learning of others and information is necessary to provide appropriate educational programming, and when a student's behavior violates the code of student conduct and is determined to be a manifestation of a student's disability.

Reasonable Accommodations

Throughout the Title IX sexual harassment procedures, the district shall make reasonable accommodations for any parties with identified qualifying disabilities, and address barriers being experienced by disadvantaged students such as English learners and homeless students, consistent with the requirements of federal and state laws and regulations and board policy.

Emergency Removal

If the district has determined, based on an individualized safety and risk analysis, that there is an immediate threat to the physical health or safety of any student or other individual due to the allegations of Title IX sexual harassment that justifies removal, the respondent may be removed from the district's education program or activity or moved to an alternative setting, consistent with all rights under federal and state laws and regulations, and board policy, including but not limited to the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. If the respondent is an identified student with a disability, or thought to be disabled, the Title IX coordinator shall contact the director of special education to coordinate the required actions in accordance with board policy. The respondent shall be provided with notice and provided an opportunity for due process, in accordance with law, regulations and board policy. When expulsion is necessary because continuation of educational services is not feasible, the board's written adjudication of expulsion shall address the pending Title IX process and the impact of the outcome of the Title IX process on a student's emergency removal status (20 U.S.C. Sec. 1400 et seq. ; 29 U.S.C. Sec. 794; 42 U.S.C. Sec. 12101 et seq. ; 34 CFR 106.44; board policy 5114 Suspension and Expulsion).

Administrative Leave

When an employee, based on an individualized safety and risk analysis, poses an immediate threat to the health or safety of any student or other individual justifying removal, the employee may be removed on an emergency basis.

An accused nonstudent district employee may be placed on administrative leave during the pendency of the grievance process for formal complaints, consistent with all rights under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, and in accordance with state law and regulations, and an applicable collective bargaining agreement or individual contract (29 U.S.C. Sec. 794, 42 U.S.C. Sec. 12101 et seq., 34 CFR 106.44).

Required Reporting Under Other Policies

In addition to implementing the Title IX sexual harassment procedures, the Title IX coordinator shall ensure that reported conduct which meets the definition of other laws, regulations or board policies, is also appropriately addressed in accordance with the applicable laws, regulations or board policies, including but not limited to, incidents under the Safe Schools Act, reports of educator misconduct, threats, or reports of suspected child abuse.

Timeframes

Reasonably prompt timeframes shall be established for the conclusion of the grievance process for formal complaints, including timeframes for the informal resolution process and timeframes for filing and resolving appeals.

The established timeframes included in these procedures may be adjusted to allow for a temporary delay or a limited extension of time for good cause. Written notice of the delay or extension and the reason for such action shall be provided to the complainant and the respondent, and documented with the records of the complaint. Good cause may include, but is not limited to, considerations such as:

A. The absence of a party, a party's advisor or a witness;

B. Concurrent law enforcement activity;

C. Need for language assistance or accommodation of disabilities.

Redirection or Dismissal of Title IX Formal Complaints

Formal complaints may be dismissed, if at any time during the investigation or written determination steps described below:

A. A complainant provides written notification of withdrawal of any allegations or of the formal complaint;

B. The respondent is no longer enrolled or employed by the district in a district program or activity:

C. Specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations:

D. Only alleged conduct that occurred in the district's education program or activity, and against a person in the United States, may qualify as Title IX sexual harassment within the district's jurisdiction. If it is determined during the investigation or written determination steps below that none of the allegations, if true, would meet the definition and parameters of Title IX sexual harassment within the district's jurisdiction, the Title IX coordinator shall dismiss the formal complaint under Title IX. If the matter merits review and possible action under the code of student conduct and other board policies, then the Title IX coordinator shall redirect the report to the appropriate administrator to address the allegations;

E. Written notification shall be promptly issued to the parties simultaneously of any allegations found not to qualify or that are dismissed in compliance with Title IX. Written notification shall state whether the allegations will continue to be addressed pursuant to the code of student conduct and other board policies;

F. A dismissal may be appealed via the appeal procedures set forth in this procedure.

Consolidation of Title IX Formal Complaints

The district may consolidate formal complaints against more than one (1) respondent, or by more than one (1) complainant against one or more respondents, or by one (1) individual against another individual, where the allegations of sexual harassment arise out of the same facts or circumstances.

Appeal Process

Both parties shall have the right to appeal a determination of responsibility and the right to appeal the district's dismissal of a Title IX formal complaint or any allegation in the Title IX formal complaint. The scope of appeals related to Title IX sexual harassment are limited to the following reasons for appeal as stated in the Title IX regulations:

A. A procedural irregularity that affected the outcome of the matter;

B. New evidence that that could affect the outcome was not reasonably available at the time the decision to dismiss or determination of responsibility was made:

C. The Title IX coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against the individual complainant or respondent or for or against complainants or respondents generally that affected the outcome of the matter.

Written notice of a party's appeal shall be submitted to the Title IX coordinator within five (5) school days after the date of the written determination. Notice of appeal shall include a brief statement describing the basis for the appeal.

The Title IX coordinator shall ensure that the designated appeal authority is not the same person as the decision-maker that reached the determination, the investigator, or the Title IX coordinator. The designated appeal authority shall be the district attorney.

For all appeals, the designated appeal authority shall:

A. Provide written notice to the other party when notice of an appeal is filed and implement appeal procedures equally for both parties;

B. Provide both parties a reasonable, equal opportunity to submit a written statement in support of or challenging the stated basis for the appeal. Supporting statements shall describe in detail as applicable the procedural irregularities asserted to have affected the outcome of the determination, the nature of any new evidence asserted to have affected the outcome, and the nature of any conflict of interest or bias asserted to have affected the outcome, with an explanation of how the outcome was affected by such factors. If evidence exists supporting the basis for appeal, it shall accompany the supporting statement, or it shall identify where such evidence may be found.

Supporting statements must be submitted to the appeal authority and provided to the other party within ten (10) school days of the written notice of appeal.

Statements in opposition to the appeal shall be submitted within five (5) school days of the submission of supporting statements. If a statement in opposition to an appeal refers to any evidence beyond what is described in a supporting statement, the statement shall accompany the statement in opposition, or the statement shall identify where such evidence may be found.

The appeal authority may accept and consider evidence in support of or in opposition to an appeal in making any conclusions necessary to deciding the appeal. Alternatively, when the appeal authority determines that factors exist making it necessary for the decision-maker to further develop the evidentiary record relevant to the basis for appeal, the appeal authority may return the matter to the decision-maker for that limited purpose.

C. Determine whether the appeal meets the grounds for permitted reasons for appeal and justifies modifying the written determination.

D. Issue a written decision setting forth the respects, if any, in which the written determination is modified and the rationale for the result within ten (10) school days.

E. Provide the written decision simultaneously to both parties. A copy of the written decision shall also be provided to the Title IX coordinator.

Recordkeeping

The district shall maintain the following records for a of a minimum of seven (7) years after conclusion of procedures and implementation of disciplinary sanctions and/or remedies, or in the case of a complainant or respondent who is a minor, until the expiration of the longest statute of limitations for filing a civil suit applicable to any allegation (whichever is longer):

A. Each Title IX sexual harassment investigation including any written determination and any audio or audiovisual recording or transcript, disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the district's education program or activity;

B. Any appeal and the result;

C. Any informal resolution and the result;

D. All materials used to train the Title IX coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process;

E. Records of any district actions, including any supportive measures, taken in response to a report or formal complaint of Title IX sexual harassment. In each instance, the district shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the district's education program or activity. If a district does not provide a complainant with supportive measures, then the district must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the district in the future from providing additional explanations or detailing additional measures taken.

CROSS REFERENCES

1410	Local Units
2224	Nondiscrimination/Affirmative Action
4111.1/4211.1	Nondiscrimination, Affirmative Action
4112.6, 4212.6	Personnel Records
4119.21, 4219.21	Conflict of Interest
4119.22, 4219.22	Conduct and Dress
4131/4131.1	Staff Development, Inservice Education, Visitation, Conferences
5114	Suspension and Expulsion
5125	Student Records
5131	Conduct and Discipline
5131	Code of Student Conduct, Regulation
5131.1	Harassment, Intimidation and Bullying
5131.5	Violence and Vandalism
5131.5/5131.7	Violence and Weapons, Regulation
5131.3	Substance Abuse
5131.6	Substance Abuse, Regulation
5131.7	Weapons and Dangerous Instruments
5141.4	Missing, Abused and Neglected Children
5142	Pupil Safety
5145.4	Equal Educational Opportunity
6121	Nondiscrimination/Affirmative Action
6142.4	Physical Education and Health (Dating Violence)
6171.4	Special Education

EXHIBITS

Exhibit 1	Discrimination/sexual Harassment Report Form

Based on the Pennsylvania School Boards Association procedure: *103-Attach 3 Title IX Sexual Harassment Procedures and Grievance Process for Formal Complaints*