

# HUM-P020-TITLE IX SEX-BASED HARASSMENT GRIEVANCE

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## PROCEDURE

### HUMAN RESOURCES

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#### SUMMARY

This procedure outlines for steps the district will follow to receive, investigate, and resolve complaints of Title IX sexual harassment involving students and/or staff.

#### DEFINITIONS

##### **Actual Knowledge**

Notice of sexual harassment or allegations of sexual harassment to the district's Title IX Coordinator or any official of the district who has the authority to institute corrective measures on behalf of the district, or to any employee of an elementary or secondary school.

##### **Advisor**

An individual identified by the complainant or the respondent to participate and support them in any meetings, interviews, or proceedings related to the formal complaint.

##### **Complainant**

An individual is alleged to be the victim of conduct that could constitute sexual harassment, regardless of whether the individual files a formal complaint or not. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity.

##### **Dating Violence**

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 shall be determined based on a consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.

##### **Domestic Violence**

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 Oregon's domestic or family violence laws, or by any other person against an adult or youth victim who is protected from that person's acts under Oregon's domestic or family violence laws.

##### **Evidence - Inculpatory**

Evidence that shows a person's involvement in an act; evidence that can establish guilt.

##### **Evidence - Exculpatory**

Evidence that serves to exonerate a respondent.

## **Informal Resolution**

A process facilitated by the district that allows for a resolution of formal complaint without following the steps outlined in the formal complaint process. Participation in an informal resolution process is voluntary for the complainant and the respondent. Informal resolution may not be offered when the formal complaint involves an employee allegedly sexually harassing a student.

## **Investigation**

The gathering of evidence from multiple sources for presentation to the decision-maker. Evidence may include but is not limited to interviews, reports, photos, social media posts or messages, electronic communications, and/or educational records.

## **Parties**

The complainant, respondent, and potentially the parent/legal guardian of the complainant and/or respondent.

## **Remedies**

Actions taken, or services provided by the district when a respondent is found responsible that are designed to maintain or restore the complainant's equal access to education and activities. Remedies may include some of the same individualized services previously provided as supportive measures. Remedies are not required to be non-disciplinary or non-punitive and need not avoid burdening the respondent.

## **Respondent**

An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

## **Sanctions**

Actions taken against the respondent as a result of a finding of responsibility.

Potential disciplinary sanctions include:

1. Student discipline up to and including suspension and expulsion;
2. Removal from various activities, committees, extra-curricular, positions, etc.;
3. Disqualification for awards and honors;
4. Employee discipline up to and including termination, in accordance with laws, agreements, contracts, and handbooks.

## **Sexual Assault**

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI.

## **Sexual Harassment**

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

1. A District employee conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or
3. Sexual assault, domestic violence, dating violence and stalking.

## **Stalking**

Engaging in a course of conduct directed at a specific person that would cause a reasonable person fear for the person's own safety or the safety of others or suffer substantial emotional distress.

## **Supportive Measures**

Individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment. These services are made available without charge to the complainant and/or the respondent before or after the filing of a complaint or where no formal complaint has been filed, and include measures designed to protect the safety of all parties and/or the district's educational environment.

## **INSTRUCTION**

### **1. Reporting**

- a. Any person may make a report of sexual harassment as defined by Title IX. This report may be made in person or by mail, telephone, e-mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. The report can be made at any time. Reports made outside of normal business hours (Monday to Friday, 8am to 5pm) may not be reviewed by the Title IX Coordinator until the next business day.
- b. The Executive Director of Human Resources is designated as the Title IX Coordinator. The Title IX Coordinator will coordinate the district's efforts to comply with its responsibilities related to Administrative Policy HUM-A036 "Title IX Policy" and this procedure. Contact information for the Title IX Coordinator is posted on the district website and included in each handbook or catalog.
- c. If the information reported may constitute child abuse, the Title IX Coordinator will ensure that a mandatory report is/was made to the Oregon Department of Human Services or a law enforcement agency.

### **2. Response and Supportive Measures**

- a. The district will promptly respond when there is actual knowledge, even if a formal complaint has not yet been filed. The district shall treat complainants and respondents equitably by providing supportive measures and by following a grievance procedure prior to imposing any disciplinary sanctions.
- b. The Title IX Coordinator shall promptly contact the complainant to:
  - i. Discuss the availability of supportive measures;
  - ii. Consider the complainant's wishes regarding a formal complaint. In certain circumstances, the Title IX Coordinator may sign a formal complaint and proceed with an investigation despite a complainant not wishing to file a formal complaint.
  - iii. Explain supportive measures that are available whether or not a formal complaint is filed;
  - iv. Explain the process for filing a formal complaint.
- c. If after an individualized safety and risk analysis, it is determined that there is an immediate threat to the physical health or safety of any person, an emergency removal of the respondent can take place. The district will provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- d. An employee may be placed on administrative leave pending the grievance process.

### 3. Formal Complaint

- a. A complainant or the complainant's parent/legal guardian may file a formal complaint. The formal complaint must be submitted in writing or email and must be signed/digitally signed by the complainant or their parent/legal guardian.<sup>1</sup>
- b. Consolidation of Complaints: The district may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by one or more complainant against one or more respondents, or by one party against another party, where the allegations of sexual harassment arise out of the same facts or circumstances.
- c. Written Notice: Upon receipt of a formal complaint, the district will provide the following written notice to the parties:
  - i. Notice of the district's grievance process, including any informal resolution process; and
  - ii. Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time. Notice will be provided with sufficient time to prepare a response before any initial interview; and
  - iii. The respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process; and
  - iv. The parties may inspect and review evidence; and
  - v. The parties may have an advisor of their choice; and
  - vi. Notification that knowingly making a false statement or knowingly submitting false information during the grievance process could lead to disciplinary action.

### 4. Supportive Measures

- a. The Title IX Coordinator will contact the complainant and respondent to discuss supportive measures.
- b. If necessary, the Title IX Coordinator will arrange for an individualized safety and risk analysis. If necessary, a student or employee may be removed from school or placed on administrative leave immediately.
- c. The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the district to provide supportive measures.

### 5. Timeline

- a. Typically, the district will complete the grievance process within 90 days of the submission of a formal complaint. However, upon written notification to the parties, the district may temporarily delay the grievance process or provide a limited extension of time for good cause.

### 6. Investigation

- a. The Title IX Coordinator will coordinate the investigation. The investigation may be conducted by a trained district employee or an external investigator. The investigation must:
  - i. Include an objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence;

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<sup>1</sup> The Title IX Coordinator has the authority to sign a formal complaint and initiate an investigation (34 CFR 106.30).

- ii. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the district and not on the parties;
- iii. Provide an equal opportunity for the parties to present witnesses, and other inculpatory and exculpatory evidence;
- iv. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence
- v. Provide the parties with the same opportunities to have an advisor of their choice during any grievance proceeding, including the opportunity to be accompanied to any related meeting or interview. The district may establish restrictions regarding the extent to which the advisor may participate in the proceeding, as long as the restrictions apply equally to both parties;
- vi. Provide to the party whose participation is invited, written notice of the date, time, location, participants who will be in attendance, and purpose of all hearings, investigative interview, or other meetings, with sufficient time for the party to prepare to participate;
- vii. 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 raised in a formal complaint.
- viii. Create a draft investigative report that fairly summarizes relevant evidence and is made available to each party and each party's advisor for review. The parties shall have 10 days to submit a written response, which the investigator will consider prior to completion of the final investigative report.

#### 7. Determination Regarding Responsibility

- a. After the district has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision maker(s) must provide each party the opportunity to:
  - i. Submit written, relevant questions that a party wants asked of any party or witness within 10 days;
  - ii. Provide each party with the answers;
  - iii. Allow for additional, limited follow-up questions from each party.
- b. The decision-maker shall explain to the party proposing the questions any decision to exclude a question as not relevant.
- c. Credibility determinations are not based on the person's status as a complainant, respondent or witness.
- d. The respondent shall be deemed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- e. Potential disciplinary sanctions include:
  - i. Student discipline up to and including suspension and expulsion;
  - ii. Removal from various activities, committees, extra-curricular, positions, etc.;
  - iii. Disqualification from awards and honors;
  - iv. Employee discipline up to and including termination, in accordance with laws, agreements, contracts, and handbooks.

## 8. Remedies

- a. The Title IX Coordinator is responsible for effective implementation of any remedies. Potential remedies include, but are not limited to:
  - i. Academic supports such as tutoring or retaking a class without penalty;
  - ii. Access to counseling and/or advocacy services;
  - iii. Modified schedules;
  - iv. Additional Title IX training for students and/or staff; and
  - v. Data reviews, assessments, or climate checks.

## 9. Decision and Notification

- a. The decision-maker will use the preponderance of the evidence standard for determining whether a violation has occurred.
  - b. The decision-maker shall issue a written determination to the parties simultaneously. The written determination will include:
    - i. Identification of the allegations potentially constituting sexual harassment;
    - 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, and methods used to gather evidence;
    - iii. Finding of fact supporting the determination;
    - iv. Conclusions regarding the application of the district's code of conduct to the facts;
    - v. A statement of, and rationale for, the result as to each allegation, including:
      1. A determination regarding responsibility;
      2. Any disciplinary sanctions the district imposes on the respondent; and
      3. Whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the complainant;
    - vi. The district's procedures and permissible reasons for the complainant and respondent to appeal.
  - c. After the decision-maker issues a final decision, either party may appeal the decision to the Deputy Superintendent within 15 days of the final decision being communicated. The appeal must be submitted to the Deputy Superintendent in writing. See Section 16 below for additional details on appeals.
10. At no point in the process will the district, or anyone participating on behalf of the district, require, allow, rely upon, or otherwise use questions or evidence that constitutes, or seeks disclosure of, information protected under a legally recognizing privilege, unless the person holding such privilege has waived the privilege.
11. If, in the course of an investigation, the district decides to investigate allegations about a complainant

or respondent that are not included in the notice previously provided, the district will provide notice of the additional allegations to the parties whose identifies are known.

12. The determination regarding responsibility becomes final either on the date that the district provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

#### 13. Informal Resolution

- a. If the district receives a formal complaint, at any time prior to reaching a determination regarding responsibility, the district may offer an optional informal resolution process, provided that the district:
  - i. Provides written notice to the parties disclosing:
    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, provided 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 with respect to the formal complaint; and
    3. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
  - ii. Obtains the parties' voluntary written consent to the informal resolution process; and
  - iii. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

#### 14. Conflict of Interest and Bias

- a. No person designated as a Title IX Coordinator, investigator, decision-maker, the decision-maker for an appeal, or any person designated by the district to facilitate an informal resolution process may have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- b. The same person shall not serve as the Title IX Coordinator and decision-maker. The same person shall not serve as the Title IX investigator and decision-maker. The roles shall be filled by separate individuals. The Title IX Coordinator may serve as the investigator.

#### 15. Dismissal of Formal Complaint

- a. The district must dismiss a formal complaint regarding Title IX sexual harassment if the alleged conduct:
  - i. Would not constitute sexual harassment, even if proven;
  - ii. Did not occur in the district's education program or activity (including locations, events, or circumstances over which the district exercised substantial control over both the respondent and the context in which the sexual harassment allegedly occurred); or
  - iii. Did not occur against a person in the United States.

- b. The district may dismiss a formal complaint regarding Title IX sexual harassment if:

- i. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
  - ii. The respondent is no longer enrolled or employed by the district; or
  - iii. Specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- c. Upon dismissal of a formal complaint, the district must promptly and simultaneously send written notice of dismissal and the reason(s) for the dismissal to the parties.
  - d. The dismissal of a formal complaint under Title IX does not preclude the district from continuing any investigation and taking action under other district policies or procedures. The district may have a legal obligation to do so.

## 16. Appeals

- a. Either party may file an appeal from a determination regarding responsibility or from a dismissal of a formal complaint on the following bases:
  - i. Procedural irregularity that affected the outcome of the matter;
  - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
  - iii. The Title IX Coordinator, investigator, or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- b. Appeals must be submitted in writing to the Deputy Superintendent within 15 days of the final decision regarding responsibility or notification of dismissal.
- c. When an appeal is filed, the district must:
  - i. Notify the other party in writing;
  - ii. Implement appeal procedures equally for both parties;
  - iii. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator and does not have a conflict of interest or bias as described above;
  - iv. Give both parties an equal opportunity to submit a written statement in support of or challenging the outcome;
  - v. Issue a written decision describing the result of the appeal and the rationale for the result; and
  - vi. Provide the written decision simultaneously to both parties.

## 17. Records

- a. Records will be created and maintained in accordance with state and federal law.

## 18. No Retaliation

- a. Neither the district or any person may retaliate against an individual for reporting, testifying, providing evidence, being a complainant, otherwise participating, or refusing to participate in any investigation or process in accordance with this procedure. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance process does not constitute retaliation.
- b. Identities of the parties and participating persons will be kept confidential to the extent allowed by law and the process outlined in this procedure.

## 19. Training

- a. Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must receive training on the following:
  - i. The definition of sexual harassment under Title IX;
  - ii. The scope of the district's education program or activity;
  - iii. How to conduct an investigation;
  - iv. How to conduct a grievance process, including hearings, appeals, and informal resolution processes; and
  - v. Avoiding prejudice of the facts, conflicts of interest and bias.
- b. Decision-makers must receive training on issues of relevance of questions and evidence, including when questions about evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
- c. Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- d. Materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes, must promote impartial investigations and adjudications of formal complaints of sexual harassment, and must be made publicly available on the district's website.

## APPLICABILITY

- All employees and students

## ASSOCIATED DOCUMENTS

- HUM-A036-Title IX
- HUM-A029-Sexual Harassment
- PAP-A001-Child Abuse and Sexual Conduct
- ADM-A009-Equal Educational Opportunity
- HUM-A017-Equal Employment Opportunity

## APPROVAL AUTHORITY

- Human Resources

## REVISION HISTORY

- 08/24/2020 – Initial draft
- 05/18/2022 – Added 2.14 (Definition of Sanctions); Updated 3.3.6.1.
- 08/19/2024 – Major edits to comply with new Title IX regulations; Updated to new template.
- 10/14/2024 – Changed Superintendent to Deputy Superintendent in appeals section.
- 03/03/2025 – Revised entire document to comply with 2020 Title IX regulations.
- 3/26/2026 – Clarified that Title IX coordinator may also serve as the investigator.