

CMS TITLE IX GRIEVANCE PROCEDURES

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2020 Title IX Regulations

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. Title IX also prohibits retaliation against individuals who submit complaints or participate in the resolution process. Charlotte-Mecklenburg Schools (CMS) shall not discriminate on the basis of sex in any of 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.

I. PURPOSE

CMS is committed to providing an educational and employment environment that is free from sex discrimination, sex-based harassment, and retaliation for engaging in protected activity as required by Title IX of the Education Amendments of 1972.

To ensure compliance with federal, state, and local sex discrimination laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, CMS has developed policies and procedures that provide for prompt, fair, and impartial resolution of allegations of sex discrimination, sex-based harassment, or retaliation.

These procedures ensure that complaints of sex discrimination, harassment, or sexual violence are resolved fairly, promptly, and at the most direct level possible, in full compliance with Title IX and District policy. These procedures apply only to complaints alleging discrimination prohibited by Title IX (including sex-based harassment and sexual violence). These procedures will be available in every school site administrative office and posted on the CMS

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District [Title IX Department website](#). District policies on sex-based harassment and discrimination will be outlined in the CMS Code of Student Conduct for students and CMS Board policies for employees.

II. NOTICE OF NONDISCRIMINATION

Organizational Commitment

Charlotte-Mecklenburg Schools ("CMS") does not tolerate acts of sex or gender-based harassment. Therefore, any staff or student who believes that he or she has been subjected to sex or gender-based harassment, any parent of such a student, or any student or staff member who believes that another student or staff member is being subjected to sex or gender-based harassment is encouraged to report the harassment to CMS. CMS is committed to conducting a prompt investigation of any such reports. Supportive measures will be available to staff and students who have alleged harassment and to staff or students accused of sex or gender-based harassment. Students found to have engaged in acts of harassment or other acts that create a hostile environment may be disciplined including, if circumstances warrant, suspension or expulsion. Staff accused of engaging in acts of harassment or other acts that create a hostile environment will also be referred to the CMS Employee Relations Department.

CMS encourages students, parents, and staff to work together to prevent sex and gender-based harassment. Any staff, student, or parent/guardian with concerns regarding discrimination or harassment on the basis of sex, should contact their school's Title IX Liaison, Responsible Administrator, or the District Title IX Coordinator. Complaints can also be referred to the [Office for Civil Rights](#), US Department of Health and Human Services. Additional information about the CMS Title IX Department is available on the [Title IX department page](#).

III. WHAT IS SEXUAL HARASSMENT?

Sexual Harassment, is defined by Title IX (106.30) as conduct on the basis of sex that satisfies one or more of the following criteria:

- ❖ An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct (referred to as *quid pro quo* harassment)
- ❖ Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the recipient's educational program or activity; (i.e., creates a hostile environment); or
- ❖ "Sexual Assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Sexual harassment may include acts of sexual violence. Sexual violence is form of sex discrimination prohibited by Title IX. Acts of sexual violence, including sexual assault, dating violence, domestic violence and stalking, are not only subject to the District's disciplinary procedures, but also to state criminal laws.

IV. DEFINITIONS

"Actual Knowledge"—notice of sexual harassment or allegations of sexual harassment to district's Title IX Coordinator or any administrator of the district who has authority to institute corrective measures on behalf of the district, or to any employee of the district.

"Complainant"—a student or employee of the District who is alleged to be the victim of conduct that could constitute sexual harassment.

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You can submit a Title IX complaint and request a formal District investigation if you are:

- The person directly affected by the alleged discrimination or harassment (the complainant);
- A parent, legal guardian, or authorized representative acting on behalf of the complainant; or
- The District Title IX Coordinator (when required by federal regulations).

“Respondent”–the person, employees, other students, or third parties, alleged to have violated the District’s prohibition on sex discrimination.

“Day”–All references to “days” within this policy mean calendar days, consisting of consecutive 24-hour periods including weekends and holiday breaks. If a deadline lands on a Saturday, Sunday, or official institutional holiday, the deadline is automatically deferred to 5:00 PM on the next consecutive day that the institution is open for business.

“Sexual Assault”–an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.¹

“Dating Violence”–violence committed by a person–(A) who is or has been in a social relationship of a romantic or intimate nature with the complainant; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.²

“Domestic Violence”–felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person

¹ 20 U.S.C. 1092(f)(6)(A)(v)

² 34 U.S.C. 12291(a)(10)

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who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction where the district is located, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.³

“Stalking”—engaging in a course of conduct directed at a specific person that would cause a reasonable person to—(A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.⁴

“Sexual Violence”—Physical sexual acts occurring between any persons, including members of the same sex, perpetrated against a person's will or where a person is incapable of giving consent (e.g. due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). Several acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

“Educational programs or activity”—locations, events or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred. This also includes virtual learning environments and online communications between students and employees.

“Formal Complaint”—a document filled by a complainant or signed by the District Title IX Coordinator, alleging sexual harassment against a respondent and requesting that the district investigate the allegation.

³ 34 U.S.C. 12291(a)(12)

⁴ 34 U.S.C. 12291(a)(36)

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“Complaint Submission Date”–the date on which a written formal complaint was received by the Responsible Administrator.

“Responsible Administrator”– the person in the school building or department who is responsible for handling reports of sexual harassment for that school or department. This person could be the principal, assistant principal, dean of students, District TIX Administrator, the authorized legal designees of these individuals, or the administrator designated by the Superintendent.

“Neutral and Objective Investigator/Administrator”–an administrator or designated investigator who is not the subject of a complaint or is not a complainant.

“Notice of Allegation”– a written statement given to all complainants and respondents involved, providing the details of the allegations and the rights entitled to both parties during the investigation process.

“Notice of Investigation”–a written statement outlining the specific allegation(s) and informing all complainants and respondents involved that a formal investigation is in progress.

“Notice of Outcome”–a written statement given to all complainants and respondents involved, providing a final determination and a detailed analysis as to how that determination was reached.

V. PROCEDURAL REQUIREMENTS

A. Actual Notice:

Once a school has notice of allegations of sex-based harassment or discrimination, it must respond. Actual notice occurs when an individual notifies the Responsible Administrator or *any* school employee, regardless of job description, of conduct that reasonably may

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constitute sex discrimination. Misconduct witnessed by any school employee serves as actual notice. Indirect notice from sources such as media, on-line media, and videos also serve as actual notice.

B. Reporting:

Reports of sexual harassment can be made directly to the Responsible Administrator or to *any* school employee, regardless of their job description. Reports can also be made by the Responsible Administrator. Reports of conduct that reasonably may constitute sex discrimination will be initially processed by the Responsible Administrator. Once a report has been made, the Responsible Administrator is mandated to offer the complainant supportive measures and inform the complainant of the formal complaint grievance process. Reports of sexual harassment under Title IX are separate and distinct from reports made to law enforcement agencies.

C. Supportive/Interim Measures:

- a. Title IX requires the school to provide supportive/interim measures to ensure equal access to its education programs and activities, protect the complainant and provide due process to the respondent, pending the outcome of an investigation.
- b. Supportive/interim measures are *individualized* services that are *non-disciplinary* in nature, reasonably available and ensure equal educational access while providing a safe environment for all parties. Upon notice of an allegation of sex-based harassment, the Responsible Administrator must confidentially contact the complainant to discuss available supportive/interim measures. Supportive/interim measures can be offered with or without a formal complaint.

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- c. The specific supportive/interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. The Responsible Administrator should consider a number of factors in determining what interim measures to take, including, for example, the specific need expressed by the complainant; the age of the students involved; the severity or pervasiveness of the allegations; any continuing effects on the complainant; whether the complainant and alleged perpetrator share the same class; transportation, or extra-curricular activities; and whether other judicial measures have been taken to protect the complainant (e.g., civil protection orders).
- d. Some examples of supportive/interim measures are:
 - Counseling
 - Classroom reassignment
 - Restorative conversation
 - Restorative conference
 - Peer meditation
 - Extensions of deadlines or other course-related adjustments
 - Mutual restrictions on contact between parties
- e. The Responsible Administrator should also ensure that both parties are aware of any available resources, such as victim advocacy, housing assistance, academic support, disability services, health and mental health services, and legal assistance and the right to report a crime to local law enforcement.
- f. The District may, as appropriate, modify or terminate supportive measures at the conclusion of the grievance procedures, or at the

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conclusion of the informal resolution process, or the District may continue them beyond that point.

- g. The District will not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity.
- h. If the complainant or the respondent is a student with a disability, the Responsible Administrator will consult with one or more members, as appropriate, of the student's 504 or Individualized Education Program (IEP) team, to determine how to comply with the requirements of the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973, in the implementation of supportive measures. This requirement initiates at the onset of an allegation involving a student with a disability and prior to the implementation of any supportive measures.

D. Time Limits:

A complaint using this grievance procedure should be filed as soon as possible after the alleged misconduct. There is no statute of limitations for filing a formal complaint of sex-based misconduct under Title IX. However, in accordance with 85 Fed. Reg. 30214, a complaint may be dismissed if the elapsed time between the alleged sexual misconduct and the filing of a complaint prevents the District from collecting the evidence necessary to reach a determination. A party not satisfied with a resolution or outcome of an investigation, may submit a written appeal within three (3) days to the District Title IX Coordinator.

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E. Service:

Service of any notice or decision under this procedure shall be deemed effective on the person served as of the date of delivery if personally served, faxed or emailed. If delivered by mail, notice is effective within three calendar days of deposit.

F. Evidentiary Standard:

The school shall use a preponderance of the evidence standard (more likely than not) when investigating and resolving a complaint under these procedures. The evidence provided will be weighed against facts that it is more likely than not that the formal complaint occurred as alleged.

G. Applicability:

Title IX applies to schools' educational programs or activities, whether such programs or activities occur on-campus or off-campus, including remote learning and electronic communications.

V. 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 will be treated as sensitive information not to be shared with others except in limited circumstances. 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

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- Information given to the respondent in order to have sufficient information to respond to the allegations
- A. 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. Additionally, requests for confidentiality may impact the supportive measures available (i.e-*mutual* restrictions on contact between parties).
- B. 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 District 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 District possesses other means to obtain relevant evidence (e.g, security cameras or personnel, physical evidence)
- C. 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.

VI. INFORMAL RESOLUTION PROCESS

After a report or complaint is received, the Responsible Administrator may provide the option of an informal resolution. The District has the discretion to determine whether it is appropriate to offer an informal resolution process

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when it receives information about conduct that reasonably may constitute sex discrimination under Title IX or when a complaint of sex discrimination is made, and may decline to offer informal resolution despite one or more of the parties' wishes. Informal Resolution is appropriate when the conduct involved is not of a serious or repetitive nature and disciplinary action is not required to remedy the situation. No formal investigation is involved in the informal resolution process, and the informal resolution process shall not be considered a precondition for the filing of a formal complaint.⁵

- A. A request for informal resolution may be made at any time prior to a final determination, or the Responsible Administrator may offer the option to the Parties, in writing. The Responsible Administrator must not require or pressure the parties to participate in an informal resolution process. Both parties must provide voluntary, written confirmation that they wish to resolve the matter through Informal Resolution before proceeding. Any party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume the CMS Grievance Procedures. Once parties have agreed to the terms of the Informal Resolution Agreement, the resolution is final. The matter is considered resolved and the terms of the agreement are non-appealable. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary action (e.g., dissolution of the agreement and resumption of the CMS Grievance Procedures, referral to the Code of Student Conduct process for failure to comply, application of the enforcement terms of the agreement.)
- B. The Informal Resolution facilitator must be trained and cannot be the Investigator, Decision-Maker, or Appeal Decision-Maker.
- C. Before initiation of an informal resolution process, the District must provide to the parties notice that explains:

⁵ Informal Resolution not available if the complaint involves an employee Respondent or sex crime allegation.

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- The allegations;
- The requirements of the informal resolution process;
- That, prior to agreeing to the resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the CMS Title IX Grievance Procedures;
- That the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming CMS Grievance Procedures arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- What information the District will maintain and whether and it would disclose such information for use in its Resolution Process.

D. Methods for informal resolution may include:

- Supportive Resolution by providing supportive measures only designed to remedy the situation.
- Coaching a person on how to directly address the situation causing the problem
- Mediating a dispute between parties
- Alternative Resolution through a mechanism which could include, but is not limited to, Mediation, Shuttle Negotiation, Restorative Conference, Restorative Circle, or Restorative Conversation
- Developing written behavior expectations of the alleged offender to redirect conduct
- Arranging a meeting with the alleged offender that involves a discussion of the sexual misconduct policies and requirements for compliance

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- E. The Responsible Administrator shall document any informal resolution using the District's centralized record-keeping system, copies of such documentation and outcome letters shall be uploaded in the Title IX Case Management Platform. The Responsible Administrator shall email the signed Informal Resolution Agreement to the Title IX Office within three (3) days of resolution. The Informal Resolution Agreement must be emailed to titleixcoordinator@cms.k12.nc.us

VII. FORMAL COMPLAINT PROCEDURES

In contrast to a report, a formal complaint requires a written request by a complainant, someone allowed to file on the complainant's behalf (a parent/guardian) or signed by the Title IX Coordinator, alleging sex-based harassment against a respondent, that requests the District to investigate the matter. All formal complaints filed by students or employees in violation of Title IX shall be submitted to the Responsible Administrator for processing. Once a formal complaint is made, the school is required to respond and must offer ongoing supportive measures to both parties throughout the grievance process. If the allegation falls under the scope and jurisdiction of the Title IX Regulations, the formal investigation will be conducted by the CMS Title IX Department.

Step 1-Submitting a Formal Complaint

- A. The complainant may file a formal complaint using a form which can be obtained from the Responsible Administrator or the District Title IX Department website. A Complaint Form also may be copied from the Student Code of Conduct handbook. The complainant may attach a written narrative explaining the nature of the complaint on the Complaint Form. The Complaint Form shall contain information that describes the conduct that constitutes sex discrimination, including sex-based harassment and sexual violence, and identify with

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reasonable particularity the respondent(s) and any witnesses to the alleged conduct.

a. Dismissal

- i. The District may dismiss a formal complaint at any time during the investigation or Resolution Process if one or more of the following grounds are met:
 1. The District is unable to identify the Respondent after taking reasonable steps to do so;
 2. The District no longer enrolls or employs the Respondent;
 3. A Complainant voluntarily withdraws any or all of the allegations in the formal complaint and the District Coordinator declines to initiate a formal complaint;
 4. The District determines the conduct alleged in the Complaint would not constitute a policy violation, if proven.
- ii. Upon any dismissal, the District will promptly send the Complainant written notification of the dismissal and rationale for doing so. If the dismissal occurs after the Respondent has been made aware of the allegations, the District will also notify the Respondent of the dismissal.
- iii. The dismissal decision is appealable by any party.

b. Appeal of Dismissal

- i. The Complainant may appeal a dismissal of their formal complaint. The Respondent may also appeal the dismissal of the complaint if dismissal occurs after the Respondent has been made aware of the allegations. All dismissal

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appeal requests must be filed within three (3) calendar days of the notification of dismissal.

- B. Any District employee who either reasonably believes a student has been discriminated against based on sex or who receives a complaint of sex-based discrimination, harassment or violence from a student must immediately report the allegation to the Responsible Administrator. This reporting obligation is in addition to a school employee's reporting obligations to appropriate officials pursuant to the law and the Mecklenburg County Child Sexual Abuse Investigation and Intervention Guidelines when the employee has a reasonable belief that a student is being sexually abused or subjected to other forms of abuse and neglect prohibited by law.
- C. In the event the complainant or respondent is a student with disabilities, the Responsible Administrator will carefully review the reporting student's IEP or 504 plan and consult with a member of the student's IEP or 504 team to determine what specific accommodations that child should have throughout the CMS Title IX Grievance Process. This requirement initiates at the onset of an allegation involving a student with a disability and prior to the implementation of any supportive measures.

Step 2-Determining Jurisdiction

- A. After a formal complaint is received, the Responsible Administrator shall offer the complainant supportive measures.
- B. Within seven (7) days from the date the complaint is submitted, the Title IX Coordinator shall initiate an investigation of the complaint or inform the complainant in writing that the complaint does not fall under the jurisdiction of the District and the District will not carry out any further investigation.

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- C. If the complaint falls under the jurisdiction of the District, the Title IX Coordinator shall review the complaint to determine whether the matter falls within the scope of the expanded definition of sex-based harassment under Title IX (§106.30).
- a. If the complaint does not meet the threshold of a Title IX violation, the case will be dismissed as a Title IX violation. In this situation, the matter will be returned to the school, and the Responsible Administrator will offer supportive measures and then determine if there is misconduct as defined by the CMS Student Code of Conduct or CMS Board Policy.
 - b. If the complaint meets the threshold of sexual misconduct under Title IX, the Title IX Office will investigate the matter following the Title IX Grievance Procedures.
- D. Consolidation and Related Misconduct: If the investigation reveals evidence suggesting potential non-Title IX policy violations, the Decision-Maker will refer the matter to School Administrators (for student respondents) or the CMS Employee Relations Department (for staff respondents) for independent review, investigation, and any subsequent disciplinary measures pursuant to applicable District policies.

Step 3-Investigation

A. Notice of Allegation

Once the Title IX coordinator determines that the allegation constitutes sexual misconduct under Title IX, a Title IX Investigator will send a written Notice of Allegation to the Complainant and Respondent. The Notice of Allegation must include:

- The actual allegation that would constitute sexual harassment;
- The identity of the involved parties (if known);

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- The specific policy/rule implicated;
- The provision of sufficient time for the respondent to prepare a response to the allegations prior to any initial review;
- The presumption of innocence of the respondent;
- A statement that the parties are entitled to an advisor of their choice;
- A statement that the parties can request to inspect and review any evidence;
- Information regarding the Code of Student Conduct and false statements;
- The option for an informal resolution;
- A link to a copy of the CMS Title IX Grievance Procedures;
- The District's No Retaliation clause
- A statement informing the Parties that the District's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- An instruction to preserve any evidence that is directly related to the allegations
- The name and contact information of the Title IX Investigator
- A statement informing the parties that if evidence gathered during the formal investigation demonstrates evidence of non-Title IX violations of the CMS Code of Student Conduct or CMS Board Policies, the Decision-Maker will refer the matter to school administrators or Employee Relations for independent review, investigation, and any subsequent discipline.

Both parties must be made aware of any additional allegations that come forth during the investigation that were not included in the initial complaint.

B. Notice of Investigation

A written notice stating that a formal investigation is in progress will be sent to all parties involved once the investigation has begun. Notification will be

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made in writing and may be delivered by one or more of the following methods: in person, mailed to the parties local or permanent address as indicated in official District records, or emailed to the parties' email addresses as indicated in official District records. Once mailed, emailed and/or received in person, the notification will be presumptively delivered.

C. In order to provide a neutral and objective investigation, the Title IX Investigator will not be both an investigator and decision-maker in the investigation.

D. In conducting the investigation, the designated investigator shall interview all parties identified in the complaint and other witnesses that the investigator determines may provide information relevant to resolving the complaint allegation(s). Both the complainant and respondent shall have the opportunity to identify witnesses to be interviewed and provide documentation or other evidence for the designated investigator to review.

E. The Investigator shall consider the evidence provided and may take additional measures to complete the investigation.

- The District will take reasonable steps to protect the privacy of the parties and witnesses during its grievance process. 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 Formal Investigation will conclude within 75 calendar days, absent temporary delays for good cause that will be communicated to the parties in writing. This process encompasses interviews and evidence collection, a mandatory 10-calendar-day evidence review period, drafting of the

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investigative report, a 10-calendar-day report review period, Decision-Maker review, and issuance of the written determination. Upon receipt of the outcome letter, the parties have a three (3) calendar day appeal window.

- The Investigator will submit all evidence that is relevant and not otherwise impermissible to a Title IX Decision-Maker.
- The Title IX Decision-Maker 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 type of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, will not be disclosed and will not otherwise be used except by the Title IX Decision-Maker to determine whether one of the exceptions listed below applies), regardless of whether they are relevant:
 - Evidence that is protected under a privilege 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 Title IX Director obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and

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- 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.

F. The Title IX Coordinator will maintain documentation of all proceedings, which may include written findings of facts, transcripts, surveillance videos, notes, or audio recordings in the CMS Title IX Case Management System.

G. Non-punitive and individualized supportive measures must be offered to both parties during the investigation process.

H. Emergency Removal of Respondent from School: Title IX permits the District to temporarily remove a student on an interim basis during the investigation process in limited "emergency" circumstances if there is an immediate threat to the physical health and safety of any student or other individual exists and arises from the allegation of sexual harassment. Before the District can enact emergency removal, the District must do the following:

- Undertake an individualized risk assessment to determine whether there is an immediate and serious threat to the physical health and safety of any person arising from the allegations of sexual harassment;
- Make an affirmative determination that an immediate threat exists based on the individualized risk assessment;

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- Provide the Respondent with notice and an opportunity to challenge the emergency removal decision immediately following the Respondent's removal.

The District has the ability to place an employee on administrative leave during the investigation process. Whether such leave is paid or unpaid is at the District's discretion and subject to North Carolina law and CMS Board of Education policies.

Step 4-Notice of Outcome

Once the Title IX Decision-Maker weighs the evidence against the facts of the case using the preponderance of evidence standard (i.e., it is more likely than not that discrimination/sex-based harassment/sexual violence occurred), a written Notice of Outcome letter will be issued, detailing the findings and conclusion supporting the determination.

The Title IX Decision-Maker shall simultaneously issue a written Notice of Outcome to both the Complainant and Respondent upon reaching a determination. The Notice of Outcome shall state:

- Whether the District determined that sex-based harassment or misconduct occurred under Title IX or District policy
- The rationale and evidence analysis used to reach the findings
- Any disciplinary sanctions imposed on the Respondent
- Measures implemented to immediately stop the discriminatory conduct
- Remedies provided to restore or preserve equal educational access for the Complainant and, if applicable, the District's educational environment
- Corrective steps taken to prevent the recurrence of any harassing or discriminatory conduct

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The findings of the Decision-Maker shall become final and implemented upon the expiration of the appeal window, unless either party files a timely appeal under Step 5: Appeal Rights.

Step 5–Appeal Rights

- A. A party not satisfied with the resolution in Step 4 may submit a written appeal to the District Title IX Coordinator within three (3) calendar days of receiving the Notice of Outcome. The written appeal must clearly state the specific reasons for disagreement and explain how reconsideration would change the final outcome.

A party may appeal strictly on the following grounds:

- **Procedural Irregularity:** A procedural failure occurred that directly affected or changed the outcome of the matter.
- **New Evidence:** Relevant evidence that was not reasonably available at the time the determination was made has become available, and could change the outcome.
- **Conflict of Interest or Bias:** The Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against complainants or respondents generally, or the individual Complainant or Respondent specifically, that affected the outcome.

- A. If the dismissal is appealed, the District Title IX Coordinator will:

- a. Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- b. Implement appeal procedures equally for the parties;

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- c. Ensure that the Decision-Maker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
 - d. Ensure that the Decision-Maker for the appeal has been trained consistent with the Title IX Regulations;
 - e. Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
 - f. Notify the parties of the result of the appeal and rationale for the result.
- B. The District Title IX Coordinator will designate an Appeal Decision-Maker to hear the appeal. The Appeal Decision-Maker will not have been previously involved in the resolution process for the formal complaint.
 - a. Appeals are limited to the following grounds:
 - i. A procedural irregularity that would change the outcome.
 - ii. New evidence that would change the outcome and that was not reasonably available at the time the determination regarding responsibility was made.
 - iii. The Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the specific complainant or respondent that would change the outcome.
 - b. If the request for appeal does not provide information that meets the grounds in this Policy, then the Appeal-Decision Maker will notify all parties and their Advisors, the Coordinator, and, when appropriate, the Investigator and original Decision-Maker.
 - c. All other Parties and their Advisors, the Coordinator, and, when appropriate, the Investigator(s) and/or the Decision-Maker will be

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provided a copy of the Request for Appeal with the approved grounds and then be given three (3) calendar days to submit a response to the portion of the appeal that was approved and involves them. The Appeal Decision-Maker will forward all responses, if any, to all Parties for review and comment.

- d. The non-appealing party (if any) may also choose to appeal at this time. If so, that Request for Appeal will be reviewed by the Appeal Decision-Maker to determine if it meets the grounds in this Policy and will either be approved or denied. If approved, it will be forwarded to the party who initially requested an appeal, the Coordinator and the Investigator(s) and/or original Decision-Maker, as necessary, who will submit their responses, if any, within three (3) calendar days. Any such responses will be circulated for review and comment by all Parties. If denied, the Parties and their Advisors will be notified accordingly, in writing.
- e. No party may submit any new Requests for Appeal after this time period. The Appeal Decision-Maker will collect any additional information needed and all documentation regarding the approved appeal grounds, and the subsequent responses will be shared with the Appeal Decision-Maker, who will render a decision within ten (10) calendar days of receipt of all submissions.
- f. Appeal decisions are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions apply the preponderance of the evidence standard of proof.

C. Appeal Outcome

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- a. A Notice of Appeal Outcome letter (“Appeal Outcome”) will be sent to all Parties simultaneously, or without significant time delay between notifications. Written notification may be delivered by one or more of the following methods: in person, mailed to the Parties’ local or permanent address as indicated in official institutional records, or emailed to the Parties’ district-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, the Appeal Outcome will be presumptively delivered.
- b. Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.
- c. A party can only file one (1) appeal per incident.

D. Sanctions During Appeal

- a. Any sanctions imposed as a result of the determination are stayed (i.e., not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

Step 6–Complaints to External Agencies

If a party is not satisfied with the District Title IX Coordinator or Appeal Decision-Maker’s finding in Step 5, above, the party may file a complaint with the Office of Civil Rights (“OCR”) in Washington, D.C, within 180 days of the

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alleged violations of Title IX.⁶ More information is available at the Office of Civil Rights of the U.S. Department of Education at 400 Maryland Avenue SW, Washington, D.C, 20024.⁷

VIII. DISCIPLINARY SANCTIONS AND REMEDIES

If the investigation reveals that sexual harassment created a sexually hostile environment, then the District and/or school will take prompt and effective steps to end the harassment, eliminate the hostile environment, and prevent its recurrence. Employees and students may be disciplined if it is determined through these procedures that discriminatory action, harassment or retaliation for complaining, has occurred in violation of federal or state laws or District policies.

- A. Students. Students may be disciplined including, if circumstances warrant, out-of-school suspension, expulsion or alternative school placement. If the recommended disciplinary consequences involve either a long-term suspension or expulsion, the student is entitled to pursue the hearing and appeal rights pursuant to North Carolina General Statute § 115C-390.8, North Carolina General Statute § 115C-390.11, CMS Board of Education Policies and CMS Student Code of Conduct.
- B. Employees. Disciplinary consequences for employees including hearings and appeal rights will be governed by North Carolina law and CMS Board Policy and regulations. Employee sanctions are determined and issued by the CMS Employee Relations Department.
- C. Supportive measures and non-disciplinary remedies may be provided to both parties at the conclusion of an investigation.

⁶ See OCR manual <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

⁷ At any time during the proceedings, a party can file a complaint with OCR.

IX. NO 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 reprisal.
- 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 Responsible Administrator, 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.

X. FALSE COMPLAINTS

- A. Individuals who knowingly file a false or misleading complaint alleging harassment, discrimination or retaliation are subject to appropriate disciplinary action, including, but not limited to, dismissal of the complaint.
- B. If the preponderance of the evidence supports a finding that the complainant knowingly submitted a false or misleading complaint alleging harassment, discrimination or retaliation, the complaint is subject to being dismissed, and the student or employee who submitted the complaint is subject to discipline in a manner consistent with the District's Student Code of Conduct and CMS Board Policy and regulations.

XI. RELATIONSHIP OF THESE PROCEDURES AND TIMELINES TO LAW ENFORCEMENT ACTIVITIES

- A. Nothing in these Procedures should in any way be deemed to discourage the complainant from reporting acts subject to these procedures to local law enforcement. Complainants have the right to simultaneously file both a Title IX complaint with the District I and a criminal complaint with law enforcement. If the complainant files a criminal complaint, the Responsible Administrator should not wait for the conclusion of a criminal investigation or criminal proceeding to begin the complaint process.
- B. Although the District and/or school may undertake a short delay in its investigation if circumstances require, including a request from law enforcement officials to temporarily delay the investigation, the Responsible Administrator should continue to update the parties on the status of the investigation and inform the parties when the District and/or school resumes the Title IX investigation. The District will promptly resume its resolution process as soon as feasible. During such a delay, the Responsible Administrator will implement and maintain supportive measures for the parties as deemed appropriate.

XII. TITLE IX TRAINING MATERIALS

Training materials used by the Title IX Coordinator, Investigators, Decision-Makers, and Responsible Administrators are available on the CMS Title IX webpage and via the ATIXA repository linked below.

[Link to Title IX webpage](#)

[Link to Atixa training materials](#)

XIII. TITLE IX COORDINATOR CONTACT INFORMATION

Any questions about student-to-student or employee-to-student sexual harassment, available counseling or educational resources for students impacted by sexual harassment, or about filing a Title IX complaint with the school may be directed to the Title IX Coordinator at titleixcoordinator@cms.k12.ncs.us. The Title IX Coordinator can be emailed 24 hours a day, seven days a week.

Additional concerns can be relayed to:

Michele Jean-Jumeau
District Title IX Coordinator
Charlotte-Mecklenburg Schools
titleixcoordinator@cms.k12.nc.us
980-343-9900