Title IX Complaint Procedures

I. As defined in Title IX, the following definitions constitute "sexual harassment" for purposes of this complaint process. Sexual harassment is defined as conduct on the basis of sex that satisfies one or more of the following criteria:

A. 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;

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 the District's education program or activity; or

C. Any of the following as defined in federal law. Should these federal definitions change, so shall the definitions within this regulation to comply with law:

a) Sexual assault as defined in the Clery Act ("Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act", 20 U.S.C. 1092(f)(6)(A)(v)): Any sexual act directed against another person, forcibly and/or against the person's will; not forcibly or against the person's will when the victim is incapable of giving consent.

b) Dating violence as defined in the VAWA ("Violence Against Women Act" of 1994, 34 U.S.C. 12291(a)(10)): Any act of 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 following factors: the length of the relationship; the type of the relationship; and the frequency of the interaction of the persons involved in the relationship.

c) Domestic violence as defined in the VAWA ("Violence Against Women Act" of 1994, 34 U.S.C. 12291(a)(8)): Any felony or misdemeanor act of violence committed by a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; a person who is cohabitating with the victim or who has cohabited with the victim as a spouse or intimate partner; a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or; 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 this jurisdiction.

d) Sex-based Stalking as defined in the VAWA ("Violence Against Women Act" of 1994, 34 U.S.C. 12291(a)(30): May be defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or

suffer substantial emotional distress.

II. The following are considered "parties" to this complaint process:

A. Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

B. Respondent: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

III. The Superintendent including any designee(s) is responsible for day-to-day oversight of this complaint process.

IV. The following have been designated in the respective roles under this complaint process:

A. Title IX Coordinator(s): The District shall recognize the Legal Compliance Officer of the Equity and Compliance division with site-based and districtwide responsibility for compliance and facilitation of this complaint process. In any case, the decision-maker(s) will not be either the Title IX Coordinator(s) or the investigator(s).

B. Investigator(s):

a) Site-based – In all matters where both the complainant and respondent are students, the District shall recognize the Principal or his/her designee of the school with site-based responsibility for day-to-day facilitation of the investigator duties within this complaint process.
b) Employee – In any matter where either the complainant or respondent is an employee of the District, the District shall recognize the Personnel Review Officers of the Equity and Compliance division with districtwide responsibility for day-to-day compliance with the investigator duties within this complaint process.

C. First Level Decision-Maker(s):

a) Site based - In all matters where both the complainant and respondent are students, the District shall recognize the Assistant Superintendent in the Office of School Leadership and Improvement with districtwide responsibility for day-to-day facilitation with the decision-making duties within this complaint process.
b) Employee - In any matter where either the complainant or respondent is an employee of the District, the District shall recognize the Superintendent or his/her designee with districtwide responsibility for day-to-day facilitation with the decision-making duties within this complaint process.

D. Appellate Decision-Maker:

a) Site based Appellate Decision-Maker: The District shall recognize the Chief Academics Officer or her/his designee with districtwide responsibility for day-to-day facilitation with the appellate decision-maker duties within this complaint process.
b) Employee Appellate Decision-Maker: In any matter where either the complainant or respondent is an employee of the District, the District shall recognize the Board or its designee with districtwide responsibility for day-to-day facilitation with the appellate decision-maker duties within this complaint process.

DI. Facilitator(s) of Informal Resolution:

a) Site based – In all matters where both the complainant and respondent are students, the District shall recognize the Director of Student Discipline, Prevention and Intervention or her/his designee with districtwide responsibility for day-to-day compliance with any informal resolution duties within this complaint process.
b) Employee – In any matter where either the complainant or respondent is employee of the District, the District shall recognize the Personnel Review Officer of the Equity and Compliance division districtwide responsibility for day-to-day compliance with any informal resolution duties within this complaint process.

DII. A person who is not the complainant(s), respondent(s), Title IX Coordinator(s), investigator(s), decision-maker, appellate decision-maker, or facilitator but who testifies, assists, or participates any manner in an investigation, proceeding, or hearing as part of this complaint process is not a party.

DIII. A "formal complaint" is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment. If the complainant is under the age of 18, the parent or legal guardian can file a complaint and act on behalf of a student.

V. General Rules

A. Any person with a complaint or report alleging sexual harassment as defined within these complaint procedures, may report, in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator on the District's website. Such a report may be made at any time (including during non-business hours).

B. Schools must respond promptly to reports of Title IX sexual harassment in a manner that is not deliberately indifferent when it has actual knowledge of sexual harassment against a person in an education program or activity. All terms not specifically defined herein are defined in accordance with Title IX. The complaint process must begin if a formal complaint is filed.

C. The Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. Both the complainant(s) and respondent(s) will be treated equitably (fairly). This means for a complainant, the District will provide remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent. This means for a respondent, the District will impose disciplinary sanctions or any other actions that are not supportive measures against a respondent only after following this complaint process.

D. As part of the complaint process, the Board will provide each party an equal opportunity to present witnesses, including fact and expert witnesses, and other "inculpatory" evidence (incriminating or placing guilt) and "exculpatory" evidence (freeing or clearing guilt). All relevant evidence will be evaluated objectively. No credibility determinations will be based on a person's status as a complainant, respondent, or witness.

E. Any complaint process may be temporarily delayed, or allowed a limited extension of timelines, for good cause in the sole discretion of the Superintendent or her/his designee. Good cause includes, but is not limited to, the absence of a party, a party's advisor or a witness, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities. In the event such good cause is found, the Superintendent or her/his designee will issue written notice to the complainant and the respondent of the delay or the extension and the reasons therefore.

F. No employee will intimidate, threaten, coerce, or discriminate against any individual for exercising a right or privilege made possible under federal laws on Title IX or Board Policy JCAC, including if an individual has made a report or complaint, testified, assisted, or participated (or refused to participate in) any manner in an investigation, proceeding, or hearing as part of this complaint process. Retaliation is expressly prohibited. The exercise of rights protected under the First Amendment, or charging an individual with a code of conduct violation for making a materially false statement in bad faith do not constitute prohibited retaliation. A determination regarding responsibility alone is insufficient to conclude that a party made a materially false statement in bad faith.

G. The identity of persons involved in the process will be kept confidential by the District except as permitted by law or to carry out Title IX processes, including

complaint investigation or judicial proceeding arising thereunder. This includes the complainant; the respondent; any witness; any individual(s) who reported for filed a complaint of sex discrimination; or any individuals(s) reported to be the perpetrator of sex discrimination.

H. The District will not require a party to agree to waive his/her right to an investigation and adjudication of a formal complaint as a condition of enrollment, continuing enrollment, employment, continuing employment, or enjoyment of any other right.

VI. Supportive Measures Available

A. Supportive measures mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's 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 deter sexual harassment. Regardless of whether or not a formal complaint has been filed, the Board offers the following supportive measures, which are to be determined for individual complainant(s) and respondent(s) by the Title IX Coordinator(s): counseling by a school staff person, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual restrictions on contact between the parties, changes in classroom transition routes, increased security and monitoring of certain areas of the school campus, and/or a combination of local interventions and supports.

B. Additional supportive measures may be available on a case-by-case basis, and notice will be provided pursuant to this complaint process.

VII. Burden and Evidentiary Matters

A. The designated decision-maker will issue a determination regarding whether the respondent is responsible for the allegations of sexual harassment. Until a determination of responsibility is made at the conclusion of this complaint process, the respondent is presumed not responsible for the alleged conduct.

B. The burden of proving responsibility for the allegations in a formal complaint rests on the District, not the complainant or respondent.

C. The Board has adopted the preponderance of evidence standard for all formal complaints of sexual harassment against students and employees, including faculty, volunteers and certain third parties.

D. The District will not access, consider, disclose, or otherwise us a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized

professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the District obtains that party's (or that party's parent's) voluntary, written consent to do so. This restriction and process for consent applies equally to all parties; however, consent given to one party's advisor does not give consent to the other party's advisor if a timely request is not made.

E. The District will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

VIII. Processing Complaints

A. The District may combine formal complaints where the allegations of sexual harassment arise out of the same facts or circumstances concerning:

a) allegations of sexual harassment against more than one respondent, or
b) by more than one complainant against one or more respondents, or
c) by one party against the other party.

B. The District will not require the parties to participate in an informal resolution process. Further information regarding the informal resolution process is included within Section XII.

C. Should any deadlines within this complaint process fall on a Saturday, Sunday, or federal or state recognized holiday, then the deadline shall be honored through the end of the following business day.

D. If at any point in the investigation of reported sexual harassment of a student, the investigator determines that the reported harassment should more properly be termed abuse, the reported incident or situation shall be referred pursuant to the established protocol for child abuse investigation. Reported sexual harassment determined not to be sexual harassment as defined under Title IX may be investigated in accordance with the other applicable District policies, including student or employee codes of conduct.

IX. Resolution of a Formal Complaint

A. Once a formal complaint has been filed with Title IX Coordinator(s), the coordinator(s) will provide a copy of the formal complaint to the relevant investigator, and the coordinator will cause written notice to be issued to the parties, to the extent they are known, within three (3) business days. That notice will include:

a) Notice of the complaint process;
b) Information about any informal resolution process and the availability of voluntarily engaging in any informal resolution process;

c) Notice of the allegations of sexual harassment, including sufficient details known at the time, including the name of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known;
d) A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process;
e) A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
f) A statement that the parties may inspect and review evidence gathered as part of the investigation;
g) A statement that the "false information" and "giving false information" sections of the Code of Conduct prohibit knowingly making false statements or knowingly submitting false information during the complaint process; and
h) The range of or list the possible sanctions and remedies that may be implemented following any determination of responsibility.

B. If, during the course of the investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the foregoing notice, the Title IX Coordinator will provide notice of the additional allegations to the parties whose identities are known.

C. The District must send written notice, including reasons, simultaneously to the complainant and respondent if a determination is made that the formal complaint must or should be dismissed.

a) The formal complaint must be dismissed if the conduct alleged (a) would not constitute sexual harassment even if proved; (b) did not occur in the recipient's education program or activity; or (c) did not occur against a person in the United States. Such a dismissal does not preclude action under another applicable policy or the code of conduct.
b) The formal complaint may be dismissed or any allegations therein if (a) the complainant notifies the Title IX Coordinator(s) in writing that they would like to withdraw the formal complaint or any allegations therein; (b) the respondent is no longer enrolled or employed by the recipient; or (c) specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
c) If the decision-maker(s) dismiss(es) the formal complaint under either standard, he or she must send written notice of the dismissal and the reason(s) simultaneously to the parties.

D. The Parties may submit evidence to the investigator(s), including any fact and expert testimony, within ten (10) calendar days of receiving notice of the formal complaint.

E. Within twenty (20) business days of the filing of the formal complaint, the Board's investigator(s) will complete the initial review of the evidence. The investigator(s) will send to each party and the party's advisor, if any, any non-privileged evidence subject to inspection and review in an electronic format or a hard copy.

F. No later than ten (10) calendar days after the receipt of the initial review of the evidence, each party has the right to submit a written response to the evidence, which the investigator(s) will review and consider prior to the completion of the investigative report.

G. Within thirty-five (35) business days after notice of the formal complaint and including the time for each party to submit a written response to the initial review of evidence, the Board's investigator(s) will finalize and send to the parties and their advisors, if any, an investigative report that fairly summarizes the relevant evidence.

H. The parties have ten (10) calendar days following the receipt of the investigative report to submit to the Board's decision-maker(s) written, relevant questions that the party wants asked of any party or witness. However:

    a) Questions and evidence regarding the complainant's sexual predisposition or prior sexual behavior are not relevant unless such questions and evidence are offered to prove either:
    b) that someone other than the respondent committed the conduct alleged by the complainant; or
    c) that the conduct alleged by the complainant was consensual only (i) if the students are not under the age of 16, because consent cannot be given by an individual under the age of 16, and (ii) if the questions and evidence concerning specific incidents of the complainant's prior sexual behavior were with the respondent.

I. If any question is deemed not relevant, the decision-maker(s) must explain to the party proposing the question the reasoning for excluding the question.

J. Answers to relevant questions will be provided to the parties within five (5) business days of submission. Parties will be permitted two (2) calendar days to submit limited follow-up questions. Those answers will be provided within five (5) business days of submission. No additional follow-up questions will be permitted without the Board's written consent.

K. Not sooner than ten (10) calendar days following the parties' receipt of the investigative report and not later than ten (10) calendar days following the last response to any party's written question or follow-up question, the Board's decision-maker(s) will issue a written determination regarding responsibility simultaneously to both parties.

L. The decision-maker(s) will ensure that the written determination regarding responsibility does the following:

a) identify the allegations alleged to be sexual harassment;
b) describe the procedural steps taken from receipt of the formal complaint through determination, including describing the notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and the hearings held;
c) make findings of fact supporting the determination;
d) make conclusions regarding how the Code of Conduct applies to the facts;
e) make a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanction to be imposed on the respondent, and whether remedies will be provided to the complainant; and
f) describe the appeal process.

X. Appeals from Written Determinations Regarding Responsibility

A. Either party may appeal from either (1) a written determination regarding responsibility or (2) the dismissal of a formal complaint or any allegations therein. The appellate decision-maker(s) will not be the same as the Title IX Coordinator(s), the investigator(s), or the decision-maker(s) in the matter being appealed. The appellate decision-maker(s) will be free from bias and conflicts of interest.
B. Appeals should be submitted in writing to the appellate decision-maker(s) within ten (10) calendar days of the decision being appealed.
C. There are limited reasons for an appeal to be considered. Appeals will be considered only on one or more of the following bases:

a) A procedural irregularity occurred that affected the outcome;
b) New evidence is now available that was that was not reasonably available at the time the determination regarding responsibility or the dismissal was made and that new evidence could affect the outcome of the matter; or
c) The Title IX Coordinator(s), investigator(s), or decision-maker(s) had a conflict of interest or bias (a) generally for or against complainants or respondents or (b) for or against the individual complainant or respondent and this affected the outcome of the matter.

D. Upon receipt of an appeal, the appellate decision-maker(s) will notify the other party in writing when the appeal is filed and will ensure that appellate procedures are

implemented equally for both parties. The notice provided to the other party will include a copy of the appellant's written appeal request.

E. Upon the receipt of an appeal, each party will have five (5) calendar days to submit a written statement in support of, or challenging, the outcome. Each party will have five (5) calendar days to submit a written response to any statement by the other party. No further submissions will be allowed or considered.

F. No additional evidence that was not part of the record will be submitted or considered on appeal unless it is new evidence that could affect the outcome of the matter and was not reasonably available at the time the determination regarding responsibility or dismissal was made.

G. No later than ten (10) business days following the parties' submission of the last written statement or response, the appellate decision-maker(s) will issue a written decision describing the result of the appeal and the rationale for the result.

H. The decision on appeal shall be final.

XI. Rights During a Complaint

A. Where a party has been invited to or is expected to participate in an investigative interview or other meeting, written notice of the date, time, location, participants, and purpose of the meeting will be issued to that party. No investigative interview or other meeting with that party will take place with less than forty-eight (48) hours of notice.

B. During any meeting or proceeding with a particular party throughout the complaint process, that particular party is entitled to have present one (1) advisor of her/his choice. The advisor's presence is to advise that party (at a later time).

a) The advisor has no right to speak, question, advocate or otherwise participate in an interview or meeting unless written consent is obtained from the Superintendent or her designee at least twenty-four (24) hours in advance of the meeting in question.
b) Any interruption caused as result of the advisor shall not be considered a delay by the District of this complaint process, but may be grounds for a good cause time extension of the complaint process.

XII. Informal Resolution

A. The District shall not require the parties to participate in an informal resolution process and shall not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the District may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication,

which shall include:

a) Provision to parties of written notice disclosing: The allegations, 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, however, 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 any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
b) Parties' voluntary, written consent to the informal resolution process.

B. The District shall not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

XIII. Remedies Available

A. If a determination is made that the respondent is responsible for the allegations, the following remedies are available to the complainant: additional supportive measures and a range of restorative practices.

XIV. Possible Disciplinary Sanctions

A. For students, if a determination is made that the respondent is responsible for the allegations, the District will impose a punishment aligned to the Code of Conduct.

B. Potential punishments may include <u>but are not limited to</u> any of the following offenses and consequences further defined in the Code of Conduct:

a) False Information or Giving False Information: Range of verbal warning to disciplinary hearing (range dependent on grade level and progressive discipline level).
b) Inappropriate Physical Contact Between Students: Range of verbal warning to short term out of school suspension for five (5) days (range dependent on grade level and progressive discipline level).
c) Profanity (including gestures, graphics, or materials): Range of verbal warning to short term out of school suspension for five (5) days (range dependent on grade level and progressive discipline level).
d) Inappropriate Activity of a Sexual Nature: Range of short term out of school suspension for three (3) days to disciplinary hearing (range dependent on grade level and progressive discipline level).
e) Sexual Misconduct: Range of short term out of school suspension for three (3) days to disciplinary hearing (range dependent on grade level and

progressive discipline level).

C. The District reserves the right to identify other offenses and consequences beyond these listed in above and may do so in compliance with this complaint process.

D. As the Code of Conduct is reviewed regularly, if any differences exist in language between the offense and consequences listed above and the Code of Conduct, then the Code of Conduct shall prevail.

E. For employees, if a determination is made that the respondent is responsible for the allegations, the matter shall be turned over to the Director of Equity and Compliance to impose punishment. The disciplinary action may range from a short term suspension to termination. If the employee is a contract employee, and the Board determines that suspension or termination of the contract is appropriate, the employee shall be entitled to the process afforded in O.C.G.A. § 20-2-940.

F. In addition to possible disciplinary sanctions outlined herein, the District may remove a respondent from the District's education program or activity on an emergency basis prior to any determination of responsibility.

a) In order to do so, the decision-maker(s) shall make an individualized safety and risk analysis.
b) If the decision-maker(s) conclude(s) that an immediate threat to the physical health or safety of any other student or other individual arising from the allegations of sexual harassment justifies removal, the decision-maker(s) may direct the emergency removal.
c) Upon such emergency removal, the decision-maker(s) will provide written notice to the respondent.

1. The respondent may challenge that decision by providing a written basis and evidence in support to the decision-maker(s) within five (5) calendar days.
2. The decision-maker(s) will then provide a written decision regarding the emergency removal. That decision can be appealed consistent with this complaint process.

XV. Training

A. All Title IX Coordinator(s), Investigator(s), decision-maker(s), appellate decision-maker(s) and any person who facilitates informal resolution will receive training: on the definition of sexual harassment, the scope of the Board's education program or activity, how to conduct an investigation and complaint process, and how to serve impartially, including the avoidance of prejudging the facts at issue, conflicts of interest, and bias.

a) Investigator(s) will receive specific training on issues of relevance and how to create an investigative report that fairly summarizes relevant evidence.
b) These trainings will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints of sexual harassment.

B. No Title IX Coordinator(s), investigator(s), decision-maker(s), appellate decision-maker(s) nor any person who facilitates informal resolution will have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

XVI. Recordkeeping

The District shall comply with the recordkeeping requirements of Title IX, including maintenance of its designated records related to sexual harassment investigation, appeal, information resolution processes, and training materials for a seven-year period.