

NOTE: Footnotes are for reference only. They should be eliminated from an individual board's policy.

TITLE IX SEXUAL HARASSMENT GRIEVANCE PROCESS

Policy Code: 1726/4036/7237

The process provided in this policy is designed for those who believe that they have been sexually harassed in violation of policy 1725/4035/7236, Title IX Sexual Harassment – Prohibited Conduct and Reporting Process, and wish to file a formal complaint. School officials shall follow the grievance process established in this policy when responding to all formal complaints of sexual harassment.

The superintendent is responsible for notifying students and their parents or legal guardians, employees, and applicants for employment of this policy and ensuring that each principal or site supervisor provides a copy of this policy to these persons.¹

A. DEFINITIONS

All definitions in policy 1725/4035/7236, Title IX Sexual Harassment – Prohibited Conduct and Reporting Process, are incorporated by reference and have the same meaning when used in this policy, including all references to “sexual harassment” in this policy.²

The following additional definitions apply in this policy.

1. Investigator

The investigator is the school official responsible for investigating and responding to a formal complaint.

2. Decision-Maker

The decision-maker is the school official responsible for making a determination regarding responsibility in response to an investigation of sexual harassment triggered by a formal complaint.

3. Investigative Report

The investigative report is a written account of the findings of the investigation conducted in response to a formal complaint.

4. Remedies

Remedies are individualized measures provided to a complainant designed to restore or preserve the complainant's equal access to the education program and

¹ Notice is required by 34 C.F.R. 106.8(c).

² Alternately, the definitions in policy 1725/4035/7236 could be repeated in this policy.

activities of the school system when a respondent is found responsible for sexual harassment.

Remedial measures available to a complainant following a determination of responsibility include counseling, mental health services referral, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual or one-way restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring, and other measures determined by school officials to be necessary to restore or preserve the complainant's equal access to the education program and activities, regardless of whether such measures impose a burden on the respondent or are punitive or disciplinary in nature.

5. Disciplinary Sanctions

Disciplinary sanctions are consequences imposed on a respondent when the respondent is found responsible for sexual harassment.

B. FILING A FORMAL COMPLAINT TO INITIATE THE GRIEVANCE PROCESS

A formal complaint initiates the grievance process.

1. Individuals Who May File a Formal Complaint

a. Eligible Complainants

Eligible individuals who believe that they have been sexually harassed in violation of policy 1725/4035/7236, Title IX Sexual Harassment – Prohibited Conduct and Reporting Process, may initiate the grievance process for alleged sexual harassment by filing a formal written complaint with the Title IX coordinator. To be eligible to file a formal written complaint, the complainant must be participating in or attempting to participate in the education program or activities of the school system at the time of filing.³

b. The Title IX Coordinator

If the complainant does not wish to file a formal complaint and the matter has not been adequately resolved through the provision of supportive measures, the Title IX coordinator may initiate the grievance process by signing a formal complaint. In accordance with law, only the complainant and the Title IX coordinator may initiate the grievance process; no other

³ The requirement that the complainant be participating in or attempting to participate in the education program or activities of the school system is established in 34 C.F.R. 106.30(a). The “complainant” must be the alleged victim of the sexual harassment. *Id.* Together, these requirements significantly restrict who may file formal complaints.

individuals or school officials shall have authority to do so.⁴

2. Time Period for Filing a Formal Complaint

There is no deadline for filing a complaint.⁵ A complaint should be filed as soon as possible after the conduct occurs, preferably within 30 days after the complainant becomes aware of the alleged sexual harassment, unless the conduct forming the basis for the complaint is ongoing. School officials will initiate the grievance process regardless of when the formal complaint is submitted, but delays in reporting may significantly impair the ability of school officials to investigate and respond to the allegations.

In addition, in some circumstances it may be necessary for the Title IX coordinator to sign a formal complaint to initiate the grievance process in order to meet the school system's legal obligations when the coordinator is aware of sexual harassment or alleged sexual harassment and the complainant has not yet filed a formal complaint. The Title IX coordinator can do so at any time.

3. Contents of the Formal Complaint

The complaint should (1) contain the name and address of the complainant and the student's parent or guardian if the complainant is a minor student (2) describe the alleged sexual harassment, (3) request an investigation of the matter, and (4) be signed by the complainant or otherwise indicate that the complainant is the person filing the complaint.⁶

4. How to File the Formal Complaint

The complaint may be filed with the Title IX coordinator in person, by mail, or by email.⁷ Complaint forms may be obtained from the Title IX coordinator or on the school system website.⁸

5. School System's Response to Receipt of the Formal Complaint

- a. Upon receipt of a formal complaint of sexual harassment, the Title IX coordinator shall engage in an interactive process with the complainant,

⁴ This limitation on who may file a formal complaint is imposed by 34 C.F.R. 106.30(a), which defines a formal complaint as "a document filed by a complainant or signed by the Title IX Coordinator...."

⁵ The Title IX regulations do not establish a time frame within which a formal complaint must be filed, nor allow the board to dismiss a formal complaint because it was not filed within a particular time frame.

⁶ These elements meet the definition of a formal complaint in 34 C.F.R. 106.30(a) except that the regulation does not specify that the name and address of the student's parent must be included in the complaint.

⁷ The specified means of filing are required by 34 C.F.R.106.30(a). If the school system has an electronic portal for reporting sexual harassment to the Title IX coordinator, note it here.

⁸ If complaint forms are not available on the school system website, specify where they may be obtained.

consider the provision of supportive measures in light of the complainant's wishes, provide supportive measures as appropriate, and otherwise fulfill the requirements of Section D of policy 1725/4035/7236, Sexual Harassment – Prohibited Conduct and Reporting Process, unless the Title IX coordinator has already done so in response to an initial report of the same allegation of sexual harassment.⁹

- b. School officials reserve the right to consolidate formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.¹⁰ The Title IX coordinator shall advise the complainant if the formal complaint will be consolidated with others.¹¹
- c. The formal complaint initiates the grievance process as described below.

C. GENERAL PRINCIPLES OF THE GRIEVANCE PROCESS FOR FORMAL COMPLAINTS¹²

To ensure a complete, thorough, and fair grievance process for formal complaints of sexual harassment, school officials responsible for the investigation, adjudication, or appeal of a formal complaint of sexual harassment shall comply with the following requirements. Failure by any school official to comply with these requirements or other standards or procedures established in this policy is cause for disciplinary action.

1. Equitable Treatment

Complainants and respondents must be treated equitably throughout the grievance process. Relevant evidence collected in the investigation of a formal complaint must be evaluated objectively. No individual designated as a Title IX coordinator, investigator, decision-maker, or appeal decision-maker will have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Credibility determinations will not be based on a

⁹ The steps to be taken in this paragraph are required by 34 C.F.R. 106.44(a)-(b).

¹⁰ Consolidation of formal complaints is permitted, but not required, by 34 C.F.R. 106.45(b)(4).

¹¹ The notice to the complainant is not explicitly required by the regulations but will help to keep the complainant fully informed.

¹² All of the general principles detailed in this section are required by 34 C.F.R. 106.45(b) and/or 34 C.F.R. 106.71(a) and must be observed in the course of carrying out the grievance process. With the exception of subsection C.8, (providing a time frame for the grievance process), the principles need not be explicitly stated in the board's policy and could be moved to an administrative regulation or be reserved for training. We recommend consultation with the board attorney to consider the advantages and disadvantages of retaining or removing this section from the policy. Note: If Section C is removed entirely, the remaining policy sections will renumber. This will require an adjustment to the seven cross references to other policy sections/subsections that appear among sections D, E, and F of the policy. For example, the reference in subsection D.2 would need to be changed from "Section F" to "Section E." Likewise, the reference in subsection E.1 would need to be changed from "D.5.a" to "C.5.a."

person's status as a complainant, respondent, or witness.

The complainant and respondent shall be provided an equal opportunity to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be an attorney. If a party elects to be represented by an attorney, the party should notify school officials in advance so that an attorney for the school system may also be present. Any restrictions on advisor participation in any proceeding must be applied equally to both parties.

The complainant and respondent will both be provided a description of the range of supportive measures available to them.

2. Adequate Training

The Title IX coordinator, and all persons serving as Title IX investigators, decision-makers, or appeal decision-makers shall receive training on what constitutes sexual harassment, the scope of the school system's education program and activities, how to conduct an investigation and grievance process, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Decision-makers will be trained on any technology to be used at a live hearing and on issues of relevance of questions and evidence.¹³

Materials used to train coordinators, investigators, decision-makers, and appeal decision-makers will not rely on sex stereotypes and shall promote impartial investigations and adjudications of sexual harassment. Copyright restrictions will be taken into consideration in selecting training materials in order to comply with the school system's legal obligation to make all training materials available on the school system's website.¹⁴

3. Presumption of Non-Responsibility/Innocence

At all times prior to a determination regarding responsibility by the decision-maker, there will be a presumption that the respondent is not responsible for the alleged conduct.

4. Burden of Proof and Production of Evidence

¹³ This sentence presumes the board will offer live hearings when the respondent is a student, as provided in subsection E.1 below. The sentence may be omitted if the board does not intend to offer live hearings under any circumstances. However, the board should consult the board attorney with regard to legal issues related to the grievance process and live hearings before modifying the grievance process set out in this policy.

¹⁴ Training materials must be posted online for seven years. Therefore, materials for which the copyright holder is willing to grant permission to make the materials publicly available are preferred when possible. For additional information on the posting requirement, see footnote 58.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility will at all times rest on the school system and not on the complainant or respondent. Formal rules of evidence shall not apply in the grievance process.

5. Written Notice of Meetings and Other Proceedings

Parties whose participation is invited or expected at any hearing, investigative interview, or other meeting will be provided written notice of the event's date, time, location, participants, and purpose with sufficient time for the party to prepare to participate.

6. Confidentiality and Privacy

The school system will keep confidential the identity of any individual who has made a report or formal complaint of sexual harassment, any complainant, any respondent, and any witness, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding. A violation of this provision may constitute retaliation.

All meetings, hearings, or other proceeding conducted pursuant to this policy will be private except to the extent that the parties are permitted to be accompanied by others as provided in subsection C.1 above.

School officials shall not access, consider, disclose, or otherwise use a party's medical, mental health, or other records that are made or maintained by a professional or paraprofessional in connection with the provision of treatment to the party without the party's voluntary written consent.

7. No Disclosure of Privileged Information

No person acting on behalf of the school system shall require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege,¹⁵ unless the person

¹⁵ A privilege is a rule of evidence allowing the holder of the privilege to refuse to disclose information or provide evidence about a certain subject in a judicial or other proceeding. North Carolina recognizes several types of privilege. The ones most likely to be applicable in a proceeding under this policy are communications between: **an attorney and client**; **a school counselor and student** (G.S. 8-53.4); **a health care provider or nurse and patient** (G.S. 8-53, -53.13); **a psychologist and client or patient** (G.S. 8-53.3); **a licensed marital and family therapist and client(s)** (G.S. 8-53.5); and **agents of rape crisis centers and domestic violence programs and victims** (G.S. 8-53.12). Also subject to privilege is information acquired by: a social worker in private practice in rendering professional social services (G.S. 8-53.7); a counselor in rendering professional counseling services (G.S. 8-53.8); and journalists (G.S. 8-53.11). Other privileges recognized in North Carolina include communications between: a husband and wife (G.S. 8-56); an optometrist and patient (G.S. 8-53.9); a peer counselor rendering services to a client law enforcement employee (G.S. 8-53.10); and clergymen and communicants (G.S. 8-53.2). Please consult your board attorney if there is a question as to whether any information sought in the course of a Title IX grievance proceeding could be subject to one of these privileges.

holding such privilege has waived the privilege.

8. Timeliness of Process

School officials shall make a good faith effort to conduct a fair, impartial grievance process in a timely manner designed to provide all parties with a prompt and equitable resolution. It is expected that in most cases, the grievance process will be concluded through the adjudication phase within 90 days after filing the formal complaint.¹⁶ The board reserves the right to extend this time frame or any deadline contained in this policy for good cause with written notice to the parties of the delay and the reason for the delay. Good cause may include but is not limited to the absence of the parties or witnesses, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.¹⁷

The Title IX coordinator or other responsible school official shall make reasonable efforts to keep the complainant and respondent apprised of progress being made during any period of delay.

D. THE GRIEVANCE PROCESS FOR FORMAL COMPLAINTS: PART I – INVESTIGATION

1. Step 1 – Notice of Allegations¹⁸

- a. Upon the filing of a formal complaint, the Title IX coordinator shall, within five school business days, provide the known parties written notice of the allegations that includes:
 - i. notice of the allegations of sexual harassment in sufficient detail to permit the parties to prepare a response before any initial interview, including:
 - a) the identities of the parties involved, if known;
 - b) the conduct allegedly constituting sexual harassment; and
 - c) the date and location of the alleged incident, if known;
 - ii. a copy of this policy to give notice of the school system’s grievance process, including the investigative and adjudication procedures, and any informal resolution process available;

¹⁶ This time frame may be modified. The board should establish a realistic time frame that is achievable and may want to seek a recommendation from the board attorney. The board is required to provide a “prompt” resolution of formal complaints and should strive to balance the need for an expeditious process with the need to provide school officials and parties sufficient time for action at each step in the grievance process. Additional time is provided for the appeals phase of the process. See Section F.

¹⁷ These examples are provided in the regulations at 34 C.F.R. 106.45(b)(1)(v).

- iii. notice that the parties may have an advisor of their choice and that either party may inspect and review any evidence;
 - iv. notice of the provision in board policy 4340, School Investigations, that prohibits students and employees from knowingly making false statements or knowingly submitting false information during the grievance process; and
 - v. a statement that 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.
- b. If during the investigation, the investigator decides to investigate allegations of sexual harassment not included in the initial notice provided above, notice of the additional allegations will be provided to the parties.
2. Step 2 – Review Grounds for Dismissal of the Formal Complaint

The Title IX coordinator shall review the allegations and determine whether the formal complaint must be dismissed without further investigation because the conduct alleged in the formal complaint, even if assumed true, would not constitute sexual harassment as defined in this policy, did not occur in the school system’s education program or activities, or did not occur against a person in the United States. Such a dismissal does not preclude action under another provision of the Code of Student Conduct, board policy, or expected standards of employee behavior.¹⁹ The complaint will not be dismissed at this stage on the basis that the allegations are frivolous, without merit, or otherwise unfounded.²⁰

Upon a dismissal, the Title IX coordinator must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.²¹ The parties have the right to appeal the decision as provided in Section F.²²

The Title IX coordinator shall refer the matter that was the subject of the dismissed complaint to the principal for further action as warranted.

3. Step 3 – Initiating the Investigation

If the complaint may proceed, the Title IX coordinator shall notify the appropriate investigator, who shall investigate the formal complaint.

²⁰ Dismissing a complaint on these bases would be premature, as the allegations must be assumed to be true at this stage.

²¹ This provision is required by 34 C.F.R. 106.45(b)(3)(iii).

²² The right to appeal from a dismissal is specified in 34 C.F.R. 106.45(b)(8)(i).

- a. In order to provide a neutral and objective investigation, the investigator shall not be a party to the complaint under investigation. The investigator of a formal complaint is ordinarily determined as described below; however, the Title IX coordinator, in consultation with the superintendent, may determine that conflict of interest, bias, or other individual circumstances warrant the assignment of a different investigator.
 - i. If the respondent is a student, the investigator is the principal or designee of the school with jurisdiction over the incident.
 - ii. If the respondent is an employee or applicant for employment, the investigator is the senior human resources official or designee.
 - iii. If the respondent is neither a student nor an employee/applicant for employment, the principal of the school/site supervisor at which the complainant is enrolled or employed shall be the investigator.
 - iv. Notwithstanding the above designations, (1) if the respondent is the senior human resources official, the superintendent shall investigate the complaint; (2) if the respondent is the superintendent or a member of the board, the Title IX coordinator shall immediately notify the board chair who shall direct the board attorney to investigate, unless the board chair determines that outside counsel should be engaged to investigate.
 - b. The investigator may request assistance from the Title IX coordinator to conduct the investigation.
 - c. The Title IX coordinator and the investigator shall jointly assess the need for supportive measures for either party, including assessing the effectiveness of any supportive measures currently being provided to the complainant, and, as necessary, will implement appropriate measures in a timely manner and monitor the effectiveness of the measures during the pendency of the investigation and prior to a final determination regarding responsibility. Supportive measures provided to the complainant or respondent will be maintained as confidential to the extent that maintaining such confidentiality does not impair the ability to provide the supportive measures.
 - d. The investigator shall explain the process of the investigation to the complainant and respondent.
4. Step 4 – Conducting the Investigation

The investigator is responsible for gathering evidence sufficient to reach a

determination of whether the allegations in the formal complaint are true and whether the facts as determined by the investigator establish that sexual harassment as defined in this policy occurred. In so doing, the investigator shall impartially, promptly, and thoroughly investigate the complaint.

- a. The investigator shall interview all individuals who may have relevant information, including (1) the complainant; (2) the respondent; (3) individuals identified as witnesses by the complainant or respondent; and (4) any other individuals who are thought possibly to have relevant information. Prior written notice shall be provided to a party whose participation is invited or expected for any investigative interview or meeting in accordance with subsection C.5 above. The investigator shall provide the complainant and respondent an equal opportunity to present fact and expert witnesses and other evidence tending to prove or disprove the allegations.²³
- b. The investigator shall ensure that the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the school system and not on the complainant or respondent.²⁴
- c. The investigator shall not restrict the ability of either party to gather and present relevant evidence or to discuss the allegations under investigation.²⁵
- d. The formal complaint and the investigation will be kept confidential to the extent possible. Information may be shared only with individuals who need the information in order to investigate and address the complaint appropriately and those with a legal right to access the information. Any requests by the complainant or respondent for further confidentiality will be evaluated within the context of the legal responsibilities of the school system.²⁶

The investigator may, with approval of the Title IX coordinator, dismiss the formal complaint or any allegations therein if at any time during the investigation or decision-making process: (1) the complainant notifies the Title IX coordinator in writing that he or she would like to withdraw the formal complaint or any allegations therein; (2) the respondent is no longer enrolled or employed by the school system; or (3) specific circumstances prevent school officials from gathering evidence sufficient to reach a determination as to the formal complaint or

²³ The provisions in this sentence are required by 34 C.F.R. 106.45(b)(5)(ii).

²⁴ This is required by 34 C.F.R. 106.45(b)(5)(i).

²⁵ This is required by 34 C.F.R. 106.45(b)(5)(iii).

²⁶ OCR guidelines provide extensive guidance pertaining to confidentiality requests. See *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, linked in the legal references at the end of this policy. More detail may be established in this policy.

allegations therein.²⁷ Upon dismissal, the Title IX coordinator shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties. The parties have the right to appeal the decision as provided in Section F.

The investigator may consider the matter that was the subject of the dismissed complaint for action in accordance with board policy for violation of other expected standards of student or employee behavior.

5. Step 5 – Investigative Report and Opportunity to Review Evidence²⁸

- a. The investigator shall prepare an investigative report that fairly summarizes the relevant evidence.
- b. Before completing the final report, the investigator shall send to each party and the party’s advisor, if any, in hard copy or electronically, all the evidence collected which is directly related to the allegations raised in the formal complaint.²⁹ The parties shall have 10 days³⁰ to submit a written response for the investigator’s consideration before the investigator finalizes the investigative report.
- c. Following the parties’ opportunity to respond to the written evidence, the investigator shall finalize the written investigative report, including a recommendation on the question of responsibility and any recommended discipline sanction.
- d. The investigator shall provide a copy of the report to each party and the party’s advisor, if any, for their review and written response. The investigator shall also notify the parties of the opportunity to submit written questions to the other party and witnesses as provided in subsection E.2 below. The parties shall have 10 days³¹ to provide a written response to the investigative report, along with the party’s initial set of written questions.
- e. The investigator shall provide to the decision-maker a copy of the investigative report, the relevant evidence, and the parties’ written responses to the report and initial sets of written questions.

²⁷ Dismissing on these grounds is permitted under 34 C.F.R. 106.45(b)(3)(ii).

²⁸ The provisions of this subsection, other than as noted in footnote 32, are required by 34 C.F.R. 106.45(b)(vi). The timing for submitting the parties’ initial set of written questions is optional. The written exchange of questions must be completed before reaching a determination regarding responsibility. but there is no requirement that the initial set of questions be provided at the time the parties submit their responses to the investigative report. We added this deadline to expedite the process. See 34 C.F.R. 106.45(b)(6)(ii).

²⁹ This includes “evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility.” 34 C.F.R. 106.45(b)(5)(vi).

³⁰ This timeline may be extended but not shortened.

³¹ This timeline may be extended but not shortened.

The investigator shall also provide a description of the procedural steps taken, starting with the receipt of the formal complaint and continuing through the preparation of the investigative report, and including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence.³²

E. THE GRIEVANCE PROCESS FOR FORMAL COMPLAINTS: PART II -- ADJUDICATION

The superintendent or designee (hereinafter “superintendent”) shall serve as the decision-maker. In his or her role as decision-maker, the superintendent shall provide for the exchange of questions between the parties and a decision on responsibility in a manner consistent with state law and as provided below.

1. Step 1 – Student’s Opportunity to Request a Hearing

In cases where the respondent is a student, after the investigative report has been sent to the parties, both parties shall have three school business days to request a hearing.³³ If either party requests a hearing, the long-term suspension hearing procedures described in policy 4370, Student Discipline Hearing Procedures, shall be followed, except that (1) both parties shall have the right to participate in the hearing to the extent required by Title IX;³⁴ (2) all the evidence sent to the parties pursuant to subsection D.5.b above will be made available at the hearing to give each party equal opportunity to refer to such evidence during the hearing³⁵; and (3) prior to the hearing, both parties shall have a limited opportunity to submit and respond to written questions and follow-up questions as provided below.³⁶

2. Step 2 – Exchange of Questions and Answers

Whether or not there will be a hearing and regardless of whether the respondent is a student, after the parties are sent the investigative report, the superintendent shall provide the parties an opportunity to submit written, relevant questions that the party wants asked of any other party or witness, provide each party with the

³² The requirement for the investigator to provide a description of the procedural steps taken is optional but recommended to enable the decision-maker to include that information in the written determination regarding responsibility, as required by 34 C.F.R. 106.45(b)(7)(ii)(B). The written determination regarding responsibility is described in subsection E.4 of this policy.

³³ The purpose of the hearing for student respondents is to satisfy the requirements of state law in the event a consequence of long-term suspension or expulsion is recommended. Both parties must be given the opportunity to request a hearing because the Title IX regulations require the parties to be treated equally in the grievance process.

³⁴ For example, 34 C.F.R. 106.45 (b)(5) requires that the parties have an equal opportunity to present witnesses and evidence and to have an advisor present. Because of the sensitive nature of proceedings related to sexual harassment, it may be advisable to offer parties and witnesses the opportunity to participate remotely using video technology.

³⁵ The availability of evidence at the hearing is required by 34 C.F.R. 106.45(b)(5)(vi).

³⁶ Nothing in the regulations prohibits the parties from agreeing to waive the exchange of written questions and conduct all questioning at the hearing.

answers, and allow for additional, limited follow-up questions from each party in accordance with a reasonably prompt time frame established by the superintendent.³⁷ The parties shall submit their initial set of written questions at the time they submit their response to the investigative report as described in subsection D.5.d above.

- a. Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior will be considered not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant’s sexual behavior with respect to the respondent and is offered to prove consent.
- b. The superintendent must explain to the party proposing the questions any decision to exclude questions as not relevant.³⁸

3. Step 3 – Decision on the Question Regarding Responsibility

Following the exchange of questions and/or hearing as described above, the superintendent shall decide the question regarding responsibility, any disciplinary action, and any other measures the superintendent deems appropriate. The superintendent shall consider all the relevant evidence objectively, including evidence in the investigative report, any testimony of witnesses at the hearing, if one was held, and any additional information provided by the parties through the exchange of questions and responses as provided in subsection E.2 above.

Based on an objective evaluation of the evidence, the superintendent shall determine whether the preponderance of the evidence³⁹ supports a finding that the respondent is responsible for sexual harassment in violation of board policy, and if so, what disciplinary sanction will be imposed. Remedies will be provided to the complainant if the respondent is found responsible.⁴⁰

³⁷ The opportunity for follow-up questions is required by 34 C.F.R. 106.45(b)(6)(ii). If a hearing will be held, the decision-maker may want to streamline the process by limiting the exchange of follow-up questions to a single round with a specified limit on the number of questions allowed on follow-up. The parties will have additional opportunity to ask questions at the hearing. Alternatively, the parties presumably may agree to waive the exchange of written questions altogether.

³⁸ This limit on questions and evidence, and the need for the school system to explain the decision to exclude questions, are required by 34 C.F.R. 106.45(b)(6)(ii).

³⁹ Under the preponderance of the evidence standard, the decision maker will determine the respondent is responsible if there is more than a 50% chance, i.e., it is more likely than not, that the allegation is true. Alternatively, the board could require the evidence of responsibility to be clear and convincing, which is a higher evidentiary threshold. 34 C.F.R. 106.45(b)(1)(vii). “Clear and convincing” means that the allegation is highly and substantially more likely to be true than untrue, or stated differently, the decision-maker is reasonably certain that the allegations are true.

⁴⁰ Remedies must always be provided to the complainant where a determination of responsibility for sexual harassment has been made against the respondent. 34 C.F.R. 106.45(b)(1)(i).

4. Step 4 – Written Determination Regarding Responsibility⁴¹

The superintendent shall issue a written determination regarding responsibility simultaneously to both parties that includes:

- a. identification of the allegations potentially constituting sexual harassment under board policy;
- b. 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, methods used to gather other evidence, and hearings held;
- c. findings of fact supporting the determination;
- d. conclusions regarding the application of board policy and/or the Code of Student Conduct or expected standards of employee behavior to the facts including whether, the respondent engaged in prohibited sexual harassment or other proscribed conduct;⁴²
- e. a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent (which may be a recommendation to the board for discipline that is beyond the authority of the superintendent or other decision-maker), and whether remedies designed to restore or preserve equal access to the school system’s education program and activities will be provided to the complainant;⁴³
- f. the procedures and permissible bases for the complainant and respondent to appeal; and
- g. any other notices that are required to accompany the decision under state

⁴¹ The provisions of this subsection are required by 34 C.F.R. 106.45(b)(7).

⁴² For example, student conduct that does not rise to the level of Title IX sexual harassment may constitute a violation of policy 4329/7311, Bullying and Harassing Behavior Prohibited. Conduct towards an employee-complainant that does not rise to the level of Title IX sexual harassment may nonetheless constitute sexual harassment under Title VII, which would be prohibited by policy 7232, Discrimination and Harassment in the Workplace.

⁴³ There may be a conflict between the federal regulations and state confidentiality laws regarding the disclosure of student and employee information, in which case federal law will preempt state confidentiality law. Conflicts between FERPA and the Title IX regulations are to be resolved in favor of the Title IX regulations. See 34 C.F.R. 106.6(e) (“The obligation to comply with [the Title IX regulations] is not obviated or alleviated by the FERPA statute...or regulations...”). Note that the regulations do not authorize the disclosure of the specific remedies to be provided to the complainant. Disclosure is limited to the fact that remedies will or will not be provided to the complainant. However, the disciplinary sanction imposed on the respondent must be disclosed to the complainant.

law, such as when the superintendent imposes a long-term suspension or recommends dismissal of an employee.

F. GRIEVANCE PROCESS FOR FORMAL COMPLAINTS: PART III--APPEAL

The parties⁴⁴ shall have the right to appeal to the board of education the determination regarding responsibility, the outcome of any disciplinary proceeding, and any dismissal of a formal complaint or any allegations therein.⁴⁵ If a party appeals both the determination regarding responsibility and the outcome of a disciplinary proceeding, both matters will be heard by the board at the same time. If both parties appeal, the appeals will be heard at the same time.

1. Deadline and Grounds for Appeal

Either party may appeal by submitting a request in writing to the superintendent within three school business days of receiving the determination regarding responsibility, unless the party is entitled to a longer appeal period under state law or board policy. Any longer appeal period applicable to one party shall apply equally to the other party. The grounds for appeal may be any of the following:

- a. procedural irregularity that affected the outcome of the matter;
- b. 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;
- c. the Title IX coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter;⁴⁶
- d. the disciplinary sanction is inappropriate or unreasonable; or
- e. any other basis provided by law or board policy governing appeals to the board.

2. Notice of the Appeal

⁴⁴ Appeal rights must be granted equally to the parties.

⁴⁵ Neither party may appeal a decision not to dismiss a formal complaint.

⁴⁶ The first three grounds listed are required by the Title IX regulations. 34 C.F.R. 106.45(b)(8)(i). The other grounds are added to accommodate appeal rights provided by state statute and board policies. Although ordinarily those additional grounds would only be available to the alleged perpetrator/respondent, federal regulations require that all grounds for appeal in a Title IX grievance process must be offered equally to the parties. 34 C.F.R. 106.45(b)(8)(ii).

In all appeals, the other party will be notified in writing when an appeal is filed and be provided a copy of the appeal.

3. Appeal Procedures

- a. The board will hear the appeal. Unless otherwise required by law, the board may designate a panel of two or more board members to hear and act on behalf of the board.
- b. Appeal procedures will be implemented equally for both parties and will follow the procedures in policy 2500, Appeals to the Board, modified as necessary to allow equal participation of the parties.

If the appeal includes an appeal of a disciplinary sanction, the procedures in policy 4370, Student Discipline Hearing Procedures, policy 7940, Classified Personnel: Suspension and Dismissal; or policy 7930, Professional Employees: Demotion and Dismissal, shall also apply as applicable.

- c. After the notice of appeal is provided, both parties will be given 10 days⁴⁷ to submit a written statement in support of, or challenging, the outcome. If the basis of the appeal is newly available evidence affecting the outcome, the party shall submit such evidence or a summary of such evidence along with the party's written statement.
- d. The board will review the record and the written argument of the parties submitted on appeal, determine whether additional information is needed from any party, and take any other steps that the board determines to be appropriate in order to respond to the appeal.

4. Decision on Appeal⁴⁸

- a. After considering the record and written statements of the parties, the board will determine whether the grounds for the appeal have been substantiated.
- b. If substantiated, the board will determine the appropriate response, which may include a remand for a new investigation, a new decision, or both, or such other action as the board determines is needed to correct the error in the original proceedings.
- c. The board will provide a written decision describing the results of the appeal

⁴⁷ This timeline may be extended but not shortened.

⁴⁸ The Title IX regulations do not explain how the school system should respond if the appeals grounds are substantiated. This section may be modified with the assistance of the board attorney, provided that complainants and respondents are treated fairly and equitably, and the parties are provided a written decision simultaneously.

and rationale for the result within thirty days after receiving the appeal unless the decision is delayed for good cause. The written decision will be provided simultaneously to both parties.

5. When the Decision Becomes Final

If an appeal is timely filed, the determination regarding responsibility becomes final at the conclusion of the appeal process. However, if the decision on appeal is remand, the determination regarding responsibility does not become final until that process, including any appeal of the proceedings on remand, is concluded.⁴⁹ If an appeal is not filed, the determination regarding responsibility becomes final after the three-day appeal period.

The superintendent shall ensure that a copy of the final decision is provided to the Title IX coordinator and shall confer with the Title IX coordinator regarding any remedies to be provided to the complainant, as described in subsection G.4 below.

G. DISCIPLINARY CONSEQUENCES, REMEDIES, AND OTHER RESPONSES FOR SUBSTANTIATED SEXUAL HARASSMENT

1. Disciplinary Consequences for Students

Disciplinary consequences for substantiated sexual harassment will be assigned in accordance with the Code of Student Conduct. Based on the nature and severity of the offense and the circumstances surrounding the incident, the student will be subject to appropriate consequences and remedial actions ranging from positive behavioral interventions up to, and including, expulsion. In addition, the conduct also may be reported to law enforcement, as appropriate.

A student recommended for a long-term suspension or expulsion will have all applicable rights accorded by board policy and state law. A student with disabilities will have all rights accorded by law, including the right to a manifestation hearing before the imposition of a suspension exceeding 10 cumulative days in a school year.

This policy will not be construed to allow school officials to punish student expression or speech based on undifferentiated fear or apprehension of a disturbance or out of a desire to avoid the discomfort and unpleasantness that may accompany an unpopular viewpoint. However, false or malicious complaints of sexual harassment and false statements made in bad faith in the course of any grievance proceeding conducted pursuant to this policy are subject to disciplinary action.

Nothing in this policy will preclude the school system from taking disciplinary

⁴⁹ This situation is not addressed by the regulations. Consult the board attorney before modifying this statement.

action against a student when the evidence does not establish sexual harassment as defined in this policy but the conduct violates other board policy and/or the Code of Student Conduct.

2. Disciplinary Consequences for Employees

Substantiated sexual harassment by employees is subject to discipline up to and including dismissal. In addition, the conduct may also be reported to law enforcement, as appropriate.

An employee recommended for suspension, demotion, or dismissal shall have all applicable rights accorded by board policy and state law.

Nothing in this policy will preclude the school system from taking disciplinary action against an employee when the evidence does not establish sexual harassment as defined in this policy, but the conduct violates other board policy or expected standards of employee behavior.

3. Consequences for Other Perpetrators

Volunteers and visitors who engage in sexual harassment will be directed to leave school property and/or be reported to law enforcement, as appropriate, in accordance with policy 5020, Visitors to the Schools. A third party under the supervision and control of the school system will be subject to termination of contracts/agreements, restricted from access to school property, and/or subject to other consequences, as appropriate. Nothing in this policy will be construed to confer on any third party a right to due process or other proceedings to which student and employee respondents are entitled under this policy unless such right exists under law.⁵⁰

4. Remedies

At the conclusion of the grievance process, the superintendent or other decision-maker shall confer with the Title IX coordinator to determine the remedies to be provided to the complainant when the respondent is found responsible for sexual harassment. The Title IX coordinator shall consult with the complainant in determining appropriate remedies.

The Title IX coordinator shall be responsible for the effective implementation of

⁵⁰ The status of respondents who are not students, applicants, or employees is not clear. The board has the right to dismiss a formal complaint at any time during the investigation or adjudication if the respondent is “no longer” employed or enrolled in the school system. However, there is no clear right to act against a third-party respondent for alleged sexual harassment before a formal complaint is filed and either adjudicated or dismissed. Consult the board attorney if a third party is a respondent in a sexual harassment case.

the remedies to be provided to the complainant.⁵¹

5. Consideration of Need for More Extensive Response⁵²

If the superintendent determines that a school-wide or system-wide response is needed in order to respond to the sexual harassment in a way that is not clearly unreasonable under the circumstances, the superintendent shall provide additional staff training, harassment prevention programs, or such other measures as determined appropriate to protect the safety of the educational environment and/or to deter sexual harassment.

H. INFORMAL RESOLUTION⁵³

The board provides informal resolution processes to resolve some formal complaints of sexual harassment without a full investigation and adjudication. Informal resolution is not available unless a formal complaint is filed and will not be used to resolve formal complaints alleging that an employee sexually harassed a student. Further, school officials shall never condition an individual's enrollment, employment, or other rights on an agreement to waive the individual's right to a formal investigation and adjudication of a formal complaint.

The Title IX coordinator, or other school official in consultation with the Title IX coordinator, may offer the parties an informal process to resolve a formal complaint at any time prior to reaching a final determination regarding responsibility. Before using an informal resolution process, school officials must ensure that both parties have given voluntary, informed, written consent to attempt informal resolution. Accordingly, the Title IX coordinator, investigator, or decision-maker shall:

1. provide the parties (including the parent of a minor) a written notice disclosing:
 - a. the allegations;
 - b. the nature and requirements of the informal resolution process, including

⁵¹ This responsibility of the Title IX coordinator is established in 34 C.F.R. 106.45(b)(7)(iv).

⁵² This section may be omitted. The regulations only require the board to provide remedies to the complainant that are designed to restore or preserve the complainant's equal access to the education program or activity. There is no express requirement that the board provide remedies aimed at preventing future harassment, though the board may find it prudent to require the superintendent to consider whether such a broader response is needed to meet the board's obligations to act in a manner that is not clearly unreasonable.

⁵³ This section is optional and should be deleted if the board does not offer an informal resolution process (e.g., mediation, restorative justice program). The board is not required to do so. However, if the board does offer an informal process to resolve sexual harassment complaints, the standards established in this section are required. See 34 C.F.R. 106.45(b)(9). Facilitators of informal resolution processes must be trained to serve in that role and may not have a conflict of interest or bias. 34 C.F.R. 106.45(b)(1)(iii). We strongly recommend discussing the use of any proposed or existing informal resolution processes with the board attorney to ensure that the board's process is designed to produce outcomes that will meet the board's obligation not to be deliberately indifferent to known sexual harassment.

that if the parties agree to a resolution of the matter, the agreement precludes either party from resuming a formal complaint process arising from the same allegations;⁵⁴ and

- c. any consequences that could result from participating in the informal resolution process, including whether records will be maintained and could be shared;⁵⁵ and
2. obtain the parties' voluntary, written consent to the informal resolution process.

Any agreement reached by the parties through informal resolution may include measures that are designed to restore or preserve the parties' equal access to the education program and activities, including measures that may be punitive or disciplinary in nature.

Any informal process should be completed within a reasonable period of time, not to exceed 60 days from filing the complaint unless special circumstances necessitate more time. 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.

I. RETALIATION PROHIBITED

Any act of retaliation or discrimination against any person for the purpose of interfering with any right or privilege secured by Title IX or because the person has made a report or filed a formal complaint or testified, assisted, or participated or refused to participate in any investigation, proceeding, or hearing involving sexual harassment is prohibited.⁵⁶ Any person who is found to have engaged in retaliation will be subject to discipline, up to and including dismissal. Acts of retaliation may also be subject to policy 1760/7280, Prohibition Against Retaliation.

Complaints alleging retaliation are to be treated as claims of sex discrimination and may be filed in accordance with policy 1720/4030/7235, Title IX Nondiscrimination on the Basis of Sex.

⁵⁴ Careful consideration should be given to the nature of the informal resolution process offered and how it will be conducted. For example, the board may want to specify whether the informal process will include direct interaction by the parties; direct questioning of the parties by the facilitator; or separation of the parties in different rooms. The board may also want to specify whether any agreement reached by the parties will be binding and, if so, how breaches of the agreement will be addressed.

⁵⁵ Consequences might include for example, whether an admission of responsibility while participating in a restorative justice process would, or would not, be used in an adjudication if either party withdraws from the informal process, at which time the formal grievance process would resume.

⁵⁶ See 34 C.F.R. 106.71. See also G.S. 115C-335.5, which prohibits retaliation against an employee for filing a sexual harassment complaint and G.S. 115C-407.15, which prohibits reprisal or retaliation against anyone who reports an act of bullying or harassment. See also policy 1760/7280, Prohibition Against Retaliation.

J. RECORDS⁵⁷

The superintendent or designee shall maintain for a period of seven years records of the following:

1. each sexual harassment investigation including:
 - a. any determination regarding responsibility;
 - b. any audio or audiovisual recording or transcript from any live hearing;
 - c. any disciplinary sanctions imposed on the respondent; and
 - d. any remedies provided to the complainant designed to restore or preserve equal access to the school system's education program and activities;
2. any appeal and the result therefrom;
3. any informal resolution and the result therefrom; and
4. in conjunction with the Title IX coordinator, all materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. These materials will be made publicly available on the school system's website.⁵⁸

Legal References: Family Educational Rights and Privacy Act, 20 U.S.C. 1232g; Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 *et seq.*, 34 C.F.R. pt. 106; *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998); *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999); *Q&A on Campus Sexual Misconduct*, U.S. Department of Education, Office for Civil Rights (2017), available at <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>; *Dear Colleague Letter* (Title IX Coordinator) and *Title IX Resource Guide*, U.S. Department of Education, Office for Civil Rights (2015), both available at <https://www2.ed.gov/policy/rights/guid/ocr/title-ix-coordinators.html>; *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, U.S. Department of Education, Office for Civil Rights (2001), available at <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>.

⁵⁷ In addition to the recordkeeping requirements described in this section, there are additional recordkeeping requirements related to the school system's provision of supportive measures and other actions taken in response to reports of sexual harassment. Those requirements are described in policy 1725/4035/7236, Title IX Sexual Harassment – Prohibited Conduct and Reporting Process.

⁵⁸ If the school system utilizes training materials that are copyrighted, permission from the copyright holder will likely be needed to post the materials online. If permission cannot be obtained, the board should consider ways to inform the public about the materials used, such as by posting a list of the materials online with notice that the materials are available for public viewing at a central location.

Cross References: Title IX Nondiscrimination on the Basis of Sex (policy 1720/4030/7235), Hearings Before the Board (policy 2500), Sexual Harassment – Prohibited Conduct and Reporting Process (policy 1725/4035/7236), Prohibition Against Retaliation (policy 1760/7280), Student Discipline Hearing Procedures (policy 4370), Visitors to the Schools (policy 5020), Discrimination and Harassment in the Workplace (policy 7232), Professional Employees: Demotion and Dismissal (policy 7930), Classified Personnel: Suspension and Dismissal (policy 7940)

Issued:

Revised: