

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

## **TITLE IX SEXUAL HARASSMENT – PROHIBITED CONDUCT AND REPORTING PROCESS**

*Policy Code: 1725/4035/7236*

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The board acknowledges the dignity and worth of all students and employees and strives to create a safe, orderly, caring, and inviting school environment to facilitate student learning and achievement. As provided in policy 1720/4030/7235, Title IX Nondiscrimination on the Basis of Sex, the board will not tolerate sexual harassment in the education program and activities of the school system. The board takes seriously all reports and formal complaints of sexual harassment.

This Title IX sexual harassment policy specifically prohibits sexual harassment as that term is defined under Title IX. It provides a process for students, employees, and others to report such sexual harassment for response by school officials. All incidents of conduct that could constitute sexual harassment under this policy are to be reported and treated in accordance with this policy, whether or not the incidents may also constitute violations of other board policies or standards of conduct.

Individuals who believe they have been subjected to sexual harassment prohibited by this policy or who have witnessed or have reliable information that another person has been subjected to sexual harassment prohibited by this policy should use the process provided in Section C of this policy to report such violations.

The board also provides a grievance process for those who believe they have been victims of sexual harassment that is designed to achieve prompt and equitable resolution of formal complaints of sexual harassment through a formal investigation and adjudication of the allegations in the complaint or through informal resolution processes.<sup>1</sup> The grievance process is provided in policy 1726/4036/7237, Title IX Sexual Harassment Grievance Process. Affected individuals are encouraged to report sexual harassment in accordance with the process provided in Section C of this policy before filing a formal complaint to initiate the grievance process.

### **A. PROHIBITED BEHAVIOR**

Students, school system employees, volunteers, and visitors are expected to behave in a civil and respectful manner. The board expressly prohibits sexual harassment by students, employees, board members, volunteers, or visitors. “Visitors” includes parents and other family members and individuals from the community, as well as vendors, contractors, and other persons doing business with or performing services for the school system.

Sexual harassment prohibited under Title IX and by this policy is conduct *on the basis of sex* occurring in a school system education program or activity that satisfies one or more

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<sup>1</sup> Omit the reference to informal processes if your LEA does not provide informal means of resolving Title IX complaints.

of the following:<sup>2</sup>

1. an employee of the school system conditioning the provision of an aid, benefit, or service of the school system on an individual's participation in unwelcome sexual conduct;
2. unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school system's education program or activities. This determination requires consideration of all the facts and circumstances, including, but not limited to, the ages and disability statuses of the harasser and the victim and the number of individuals involved and their authority;<sup>3</sup>

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<sup>2</sup> This definition of sexual harassment is also used in policy, 1725/4036/7237 Title IX Sexual Harassment Grievance Process.

<sup>3</sup> In making the determination of whether conduct meets this standard, courts look at all the facts and circumstances, including, but not limited to, the ages and disability statuses of the harasser and the victim and the number of individuals involved and their authority. This information could be included in the definition of sexual harassment above or could be included in an administrative regulation or as guidance for the Title IX coordinator and decision-maker, and/or included in training materials..

3. <sup>4</sup>sexual assault including rape<sup>5</sup>, statutory rape<sup>6</sup>, fondling<sup>7</sup>, and incest<sup>8</sup>;
4. dating violence<sup>9</sup>;
5. domestic violence<sup>10</sup>; or

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<sup>4</sup> The following forms of sexual harassment have been left undefined in this policy. Instead, we have developed an administrative regulation that defines the terms. The regulation accompanies this policy and policy 1726/4036/7237, where the terms also appear. Alternatively, the board may incorporate the definitions into this policy 1720/4030/7235 and either reference or fully incorporate them into policy 1726/4036/7237, also. Regardless of which approach the board chooses, it is important for the definitions to be available to students, employees, applicants, and third parties in order to provide notice as to what conduct constitutes sexual harassment.

<sup>5</sup> The definition of “rape”, which could optionally be included within this policy, is: “the penetration of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.” “Consent” which is part of the definition of both rape and “fondling,” (see footnote 7, below) must be defined by the LEA and could optionally be included in this policy. An example of a minimal definition of consent is: *“Consent is informed, freely and affirmatively given through mutually understandable words or actions that indicate a willingness to participate in the sexual activity and may be withdrawn at any time.”* A more complete statement of consent would be: *“Consent is informed, freely and affirmatively given through mutually understandable words or actions that indicate a willingness to participate in the sexual activity. Consent can be withdrawn at any time. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance does not imply consent. Consent to one type of sexual activity does not amount to consent to another type of activity. Prior consent or sexual relations with the same person do not imply future consent. The fact that both people are in a relationship does not, by itself, establish consent. A person cannot consent if they are unconscious, asleep or impaired to the extent that they do not understand what is going on. Minors under the age of 16 are incapable of giving consent to sexual activity with a person more than four years older than the minor. Consent may never be given by mentally disabled persons, if their disability was reasonably knowable to a sexual partner who is not mentally disabled. Consent between parties engaging in sexual activity does not prevent the school system from taking disciplinary action against the parties for violation of any other board policy.”*

<sup>6</sup> The definition of “statutory rape”, which could optionally be included within this policy, is: “sexual intercourse with a child 15 years of age or younger and the perpetrator is at least 12 years old and more than four years older than the victim.”

<sup>7</sup> The definition of “fondling”, which could optionally be included within this policy, is: “the touching, underneath the clothing, of a person’s genitalia, anus, buttocks, or breasts without the consent of the victim for purposes of sexual gratification.” This definition may be modified by adding or subtracting body parts or by allowing touching over the clothing to constitute fondling.

<sup>8</sup> The definition of “incest”, which could optionally be included within this policy, is: “sexual intercourse between: (i) grandparent and grandchild; (ii) parent and child/stepchild/legally adopted child; (iii) siblings of half or full blood; or (iv) uncle or aunt and nephew or niece.”

<sup>9</sup> The definition of “dating violence”, which could optionally be included within this policy, is “violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.”

<sup>10</sup> The definition of “domestic violence”, which could optionally be included within this policy, is “a crime 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 or has cohabitated with the victim as a spouse or intimate partner; a person who is the parent or child of the victim, including others acting in loco parentis to a minor child; a person who is the grandparent or grandchild of the victim; a person who is a current or former member of the victim’s household; a person who is of the opposite sex of, and lives or has lived with, the victim; or a person who is of the opposite sex of, and is or was in a dating relationship with, the victim.”

6. stalking<sup>11</sup>.

Sexual assault, dating violence, domestic violence, and stalking will be defined in accordance with applicable law and the definitions will be incorporated into an administrative regulation developed by the superintendent.

Conduct that satisfies this standard is not sexual harassment for purposes of this policy if the conduct occurred (1) outside the United States or (2) under circumstances in which the school system did not have substantial control over both the harasser and the context in which the harassment occurred.

All references to “sexual harassment” in this policy mean sexual harassment that meets this definition.

Examples of conduct on the basis of sex that would be considered sexual harassment if the conduct satisfies the criteria above include, but are not limited to: unwelcome sexual advances; requests for sexual favors; and other verbal or physical conduct of a sexual nature, such as deliberate, unwelcome touching that has sexual connotations or is of a sexual nature; suggestions or demands for sexual involvement accompanied by implied or overt promises of preferential treatment or threats; pressure for sexual activity; continued or repeated offensive sexual flirtations, advances, or propositions; continued or repeated verbal remarks about an individual’s body; sexually degrading words used toward an individual or to describe an individual; sexual assault; sexual violence; the display of sexually suggestive drawings, objects, pictures, or written materials; posting sexually suggestive pictures of a person without the person’s consent; and forwarding pornographic material depicting a classmate or other member of the school community. Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping but not involving conduct of a sexual nature may also constitute sexual harassment.

Conduct that is determined not to meet the definition above may violate other board policies or established standards of conduct and will be treated accordingly. For example, conduct that does not meet the definition of Title IX sexual harassment above may nevertheless violate other board policies, including:

- policy 4329/7311, Bullying and Harassing Behavior Prohibited, prohibiting all forms of bullying and harassing conduct, including when it consists of unwelcome conduct of a sexual nature;
- policy 7232, Discrimination and Harassment in the Workplace, prohibiting harassment in the workplace; or

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<sup>11</sup> The definition of “stalking”, which could optionally be included within this policy, is “engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for his or her safety or the safety of others; or (ii) suffer substantial emotional distress.”

- policy 4040/7310, Staff-Student Relations, prohibiting romantic or sexual relationships between employees and students.

Nothing in this policy is intended to limit discipline for violation of other board policies when appropriate and consistent with law.<sup>12</sup>

**B. DEFINITIONS<sup>13</sup>**

The following additional definitions apply in this policy.

1. Report

A report is an oral or written notification that an individual is an alleged or suspected perpetrator or victim of sexual harassment.

Making a report initiates the interactive process with the complainant described in Section D.1, below. No disciplinary action will be taken against a respondent for sexual harassment based on a report alone.

2. Formal complaint

A formal complaint is a document signed and filed with the Title IX coordinator by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that school officials investigate the allegation(s). Filing a formal complaint initiates the grievance process set forth in policy 1726/4036/7237, Title IX Sexual Harassment Grievance Process.

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activities of the school system.

3. Complainant

The complainant is the individual(s) who is alleged to be the victim of conduct that could constitute sexual harassment.

4. Respondent

The respondent is the individual(s) who has been reported to be the perpetrator of

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<sup>12</sup> Discipline may be imposed for violation of other board policies even when the conduct would also constitute a violation of this policy, provided the discipline is not imposed (1) as a substitute for, or in lieu of, the response required by school officials under this policy or the required Title IX grievance process; or (2) for the purpose of interfering with any right or privilege conferred by this policy or the required Title IX grievance process, or otherwise secured by Title IX or its implementing regulations. This statement may be included in the policy or added to an administrative regulation and/or to training materials.

<sup>13</sup> The definitions in this section are incorporated by reference into policy 1726/4036/7237, Title IX Sexual Harassment Grievance Process.

conduct that could constitute sexual harassment.

5. Grievance Process

Grievance process means the process for investigating and reaching a final determination of responsibility for a formal complaint of sexual harassment. The sexual harassment grievance process is set out in policy 1726/4036/7237.

6. Title IX Coordinator

The Title IX coordinator is a school official who is designated to coordinate the school system's response to sexual harassment and allegations of sexual harassment. Contact information for the Title IX coordinator is posted on the school system's website and listed in policy 1720/4030/7235, Title IX Nondiscrimination on the Basis of Sex.<sup>14</sup>

7. Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the school system's education program and activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the school system's educational environment, or deter sexual harassment.

Supportive measures available to the parties include, but are not limited to, counseling, mental health services referral, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring, and other similar measures determined by school officials to be necessary to protect the safety or educational or employment activities of a party.<sup>15</sup>

8. Days

Days are calendar days unless specified otherwise.

9. Student(s)

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<sup>14</sup> The board is required to notify students, parents or legal guardians, employees, and applicants of the contact information for the Title IX coordinator and to post that information on the school system website. As a convenience to the reader, the board could include the contact information in this policy. Doing so is not a substitute for posting it on the website and listing it in policy 1720/4030/7235, however.

<sup>15</sup> This list may be modified.

“Student(s)” means the student and/or the student’s parent or legal guardian unless the context clearly indicates otherwise. When the complainant or respondent is a student, references to those terms also include the student’s parent or legal guardian unless the context clearly indicates otherwise.

10. Actual Knowledge

“Actual knowledge” means a school employee has notice of sexual harassment or allegations of sexual harassment.

**C. REPORTING SEXUAL HARASSMENT**

1. Student Reports

Any student who believes he or she is a victim of sexual harassment occurring in the school system’s education programs or activities is encouraged to report the matter to the student’s principal or to the Title IX coordinator. Reports may also be made to a teacher, counselor, assistant principal, teacher assistant, or any other school employee. Middle and high school students may also report sexual harassment through the anonymous tip line, but school officials may be limited in their ability to respond if the report does not identify the complainant.<sup>16</sup>

2. Mandatory Reporting by School Employees and Board Members

Any employee or member of the board of education who has actual knowledge of sexual harassment or allegations of sexual harassment occurring in the education program or any activity of the school system must report that information immediately to the Title IX coordinator.<sup>17</sup>

Any of the following confers “actual knowledge” and must be reported immediately:

- a. a report of sexual harassment from a student or other person;
- b. the employee or board member witnesses conduct that is or reasonably could be sexual harassment; or
- c. the employee or board member discovers evidence of sexual harassment,

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<sup>16</sup> G.S. 115C-105.51(a) requires the board of each secondary school, defined as a school serving grades six or higher, to develop and operate an anonymous tip line, in coordination with local law enforcement and social services agencies, to receive anonymous information on internal or external risks to the school population, school buildings, and school-related activities. Modify this statement if the board’s anonymous tip line is available to elementary age students.

<sup>17</sup> Alternatively, the policy may specify that reports should go first to the principal and/or human resources official, who will then inform the Title IX coordinator of the report.

such as sexualized graffiti on school property, or otherwise has reliable information or reason to believe that a student, employee, or other individual may have been sexually harassed in violation of this policy, even if no one has reported the sexual harassment.

Employees who observe an incident of harassment are expected to intervene to stop the conduct in situations in which they have supervisory control over the perpetrator, and it is safe to do so. An employee with actual knowledge of possible sexual harassment in violation of this policy who does not promptly report the conduct and/or take proper action as required by this subsection, or who knowingly provides false information about the incident, will be subject to disciplinary action, up to and including dismissal.

Any doubt about whether particular conduct is possible sexual harassment must be resolved in favor of reporting the conduct.

The mandatory reporting required by this section is in addition to required reporting under policies 4040/7310, Student-Staff Relations, and 4240/7312, Child Abuse and Related Threats to Child Safety, where the conduct at issue requires a report under either of those policies.

3. Reporting by Others

All other members of the school community are strongly encouraged to report any act that may constitute an incident of sexual harassment in violation of this policy to the school principal, the Title IX coordinator, or the superintendent.

4. Content of the Report

To the extent possible, reports should be sufficient to put school officials on notice of conduct that could constitute sexual harassment. Employees making mandatory reports should provide as much detail about the alleged sexual harassment as is known, unless such disclosure would violate law or standards of professional ethics. Reports, other than mandatory reports by employees, may be made anonymously, but anonymous reports may limit the school system's ability to respond fully if the alleged victim is not identified.

5. Time Period for Making a Report

Reports by students and third parties can be made at any time. During non-business hours, reports can be made by using the contact information for the Title IX coordinator provided on the school system's website and in policy 1720/4030/7235, title IX Nondiscrimination on the Basis of Sex.<sup>18</sup> A report should be made as soon

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<sup>18</sup> The board must provide for reports to the Title IX coordinator to be made at any time, including during non-business hours. 34 C.F.R. 106.8(a).

as possible after disclosure or discovery of the facts giving rise to the report.<sup>19</sup> Delays in reporting may impair the ability of school officials to investigate and respond to any subsequent formal complaint.

School employees and board members with actual knowledge of sexual harassment must report that information immediately, as provided in subsection C.2 above.

#### **D. SCHOOL OFFICIALS' RESPONSE TO ACTUAL KNOWLEDGE OF SEXUAL HARASSMENT**

As required to meet the school system's obligations under Title IX, school officials shall respond promptly and impartially to actual knowledge of alleged sexual harassment in a manner that is not deliberately indifferent. A response that is not deliberately indifferent is one that is not clearly unreasonable in light of the known circumstances and includes, at a minimum, the provision of supportive measures to the complainant, as described in this section.

Consistent with this duty, school officials shall respond to all reports of conduct that could constitute sexual harassment in accordance with this section. However, a report alleging conduct that is not sexual harassment as defined in this policy is not subject to this policy but may be referred to appropriate school officials as a possible violation of other board policies.

##### **1. Title IX Coordinator Initiates Interactive Process with Complainant**

Upon receiving a report of alleged sexual harassment, the Title IX coordinator shall promptly contact the complainant and the complainant's parent or guardian confidentially.<sup>20</sup> This contact must occur within three days, excluding weekends, absent extenuating circumstances.<sup>21</sup> The Title IX coordinator shall also notify the principal of the report and, if an employee is the complainant or respondent, the senior human resources official or designee.<sup>22</sup>

When contacting the complainant and parent or guardian, the Title IX coordinator

<sup>19</sup> All time frames in this policy may be modified. The intent is to balance the need for an expeditious process with the need to provide the school system with sufficient time to investigate and respond.

<sup>20</sup> The regulations do not explicitly require the involvement of the parent in this process. However, the Title IX regulations should not be read to deprive parents of any legal right to act on behalf of their child. 34 C.F.R. 106.6(g). Depending on local practices and if approved by the board attorney, this statement could be modified to require the Title IX coordinator to (1) contact the parent only when parental involvement is determined necessary based on the nature of the offense, the student's age, and other relevant circumstances, or (2) contact the parent unless, in the exercise of good judgment, the coordinator determines that parental involvement is not necessary based on the nature of the offense, the student's age, the wishes of the student, and other relevant circumstances. The board may want to consult the board attorney for more definitive guidance on when a student's parent or guardian should be informed of a report of sexual harassment.

<sup>21</sup> This timeline may be modified. The contact must occur "promptly." 34 C.F.R. 106.44(a).

<sup>22</sup> These officials may need to know of the report in order to ensure safety of students or employees or to otherwise assist in responding to the report. Other school officials may be designated if knowledge of the confidential report is necessary for them to perform their job responsibilities.

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shall do all of the following during the contact and shall document the same:

- a. offer supportive measures;
- b. consider the complainant's wishes with respect to supportive measures;
- c. explain that supportive measures are available with or without the filing of a formal complaint; and
- d. explain the process for filing a formal complaint with the Title IX coordinator and the response required of the school system when a complaint is filed, including all the following:<sup>23</sup>
  - i. that a formal complaint will initiate the grievance process described in policy 1726/4036/7237, Title IX Sexual Harassment Grievance Process;
  - ii. that a formal complaint may be filed with the Title IX coordinator in person, by mail, or by electronic mail;
  - iii. <sup>24</sup>the major steps in the grievance process, including (1) a notice of the allegations that will be provided to the respondent that includes identification of the complainant and the allegations made; (2) an investigation of the allegations of sexual harassment in which both parties will have opportunity to have an advisor, present witnesses, review evidence, pose written questions of the other party, and receive a copy of the investigative report; (3) a decision on responsibility in which a decision-maker objectively evaluates all relevant evidence and determines whether the respondent engaged in the alleged sexual harassment in violation of this policy; and (4) the opportunity for either party to appeal the decision;
  - iv. the approximate time frame for concluding the grievance process;
  - v. that school officials will treat both parties equitably by (1) providing remedies to the complainant if the respondent is found responsible, and (2) by not imposing disciplinary sanctions on the respondent

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<sup>23</sup> The regulations require only that the Title IX coordinator explain "the process for filing a formal complaint." 34 C.F.R. 106.44(a). Although there is no express legal requirement to provide the additional information in this paragraph to the complainant, doing so assists the complainant in making an informed decision whether to file a complaint and may help to show that school officials were not deliberately indifferent to alleged sexual harassment. The information in paragraphs i-vii may be moved to an administrative regulation or guidance document for the Title IX coordinator and/or be included in training materials.

<sup>24</sup> If the items in subsections i-vii are retained in policy, the details of the grievance process steps may be moved to an administrative regulation or guidance document for the Title IX coordinator and/or be included in training materials.

without first following the grievance process set forth in policy 1726/4036/7237;

- vi. the circumstances under which a formal complaint might be consolidated with other formal complaints or dismissed; and
- vii. that the Title IX coordinator may have an obligation to initiate the grievance process in the absence of a formal complaint filed by the complainant and the time frame in which that decision will be made.<sup>25</sup>

## 2. Title IX Coordinator Arranges Implementation of Supportive Measures

After considering the complainant's wishes, the Title IX coordinator shall arrange the effective implementation of appropriate supportive measures unless, in the exercise of good judgment, the Title IX coordinator determines that supportive measures should not be provided. If supportive measures are not provided to the complainant, the Title IX coordinator shall document why supportive measures were not provided and why not providing supportive measures is not deliberately indifferent to known sexual harassment.

If the complainant is a student with a disability, the Title IX coordinator may need to consult with appropriate school personnel to determine whether adjustments to the student's IEP or Section 504 plan are needed to implement any supportive measures to be provided and/or whether the student's plan necessitates any adjustment to the proposed supportive measures.

## 3. Title IX Coordinator Determines Whether to Sign<sup>26</sup> a Formal Complaint

If the complainant declined to file a formal complaint within the designated time period following the interactive process described above, the Title IX coordinator shall determine on a case-by-case basis whether to sign, i.e., file, a formal complaint to initiate the grievance process.<sup>27</sup>

<sup>25</sup> A specific deadline after which the school will make the decision could be specified, such as 10 days. We did not include a specific deadline because the Title IX coordinator may need some flexibility to act more quickly in some cases than in others. The Title IX coordinator must weigh giving the complainant time to decide whether to file a formal complaint, and thereby retain some autonomy over the decision, against the school system's obligation to act promptly to avoid being deliberately indifferent.

<sup>26</sup> "Signing" a formal complaint refers to the initiation of the grievance process by the Title IX coordinator in the absence of a formal complaint filed by the complainant. It does not mean that the coordinator "signs off" on a complaint that has been filed by a third party or by the complainant. Only the complainant and the Title IX coordinator can initiate the grievance process. The complainant does so by "filing" a complaint; the Title IX coordinator does so by "signing" a complaint. See the definition of "formal complaint" in 34 C.F.R. 106.30(a).

<sup>27</sup> In the comments accompanying the Title IX final rule, OCR emphasized that the Title IX coordinator must consider the wishes of the complainant when deciding whether to sign a complaint to initiate the grievance process. The decision is subject to the standard of deliberate indifference. 34 C.F.R. 106.44(a). Therefore, consideration should be given both to whether *signing* a complaint against the wishes of the complainant would be clearly

The Title IX coordinator should file a formal complaint (1) if the respondent is a school employee and the complainant is a student;<sup>28</sup> and (2) in other cases where, in the exercise of good judgment and in consultation with the school attorney as appropriate, the coordinator determines that a grievance process is necessary to comply with the obligation not to be deliberately indifferent to known allegations of sexual harassment.<sup>29</sup> Credibility or merit of the complaint shall not be considered in making the determination.

A decision by the Title IX coordinator to sign a formal complaint is not to be construed as supportive of the complainant or in opposition to the respondent or as an indication of whether the allegations are credible or have merit, or whether there is evidence sufficient to determine responsibility. Signing a formal complaint does not make the Title IX coordinator a complainant or party to the complaint nor relieve the Title IX coordinator from any responsibilities under this policy.

The Title IX coordinator shall document the decision of whether to sign a complaint and the reasons for that decision.

#### 4. Presumption of Non-responsibility of Respondent and Bar on Disciplinary Sanctions without Due Process

The respondent identified in any report alleging sexual harassment under this policy will be presumed not responsible for the alleged conduct until the respondent's responsibility is conclusively established through the grievance process outlined in policy 1726/4036/7237, Title IX, Sexual Harassment Grievance Process.

No disciplinary sanction or other action that is not a supportive measure, including but not limited to (1) short or long-term suspension, expulsion, or transfer to an alternative school or program for student-respondents and (2) suspension, demotion, or dismissal for employee-respondents, may be imposed for a violation of this policy unless the respondent agrees to a specific disciplinary sanction or

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unreasonable under the circumstances, and whether *failing to sign* a complaint would be clearly unreasonable under the circumstances.

<sup>28</sup> This is not required by the regulations but is recommended so that school officials can take appropriate action to address sexual harassment of a student by an employee. Consult the board attorney before modifying this standard.

<sup>29</sup> The policy could specify the factors to be considered in making this determination; however, the board should be aware that including specific factors could constrain decision-making in what are likely to be fact-intensive situations. Factors to consider could include, e.g., whether there is a pattern of conduct by a perpetrator; whether violence or weapons are involved; the seriousness of the alleged harassment; the age of the student harassed; whether there have been other complaints or reports of harassment against the alleged harasser; whether any available supportive measures are adequate to restore or preserve the complainant's or respondent's equal access to the school system's education program and activities; and whether an investigation and potential disciplinary action against a respondent is required in order to preserve every individual's equal access to the school system's education program and activities or to comply with law. Consult the board attorney for guidance if the board is considering adding specific factors to the policy.

action in an informal resolution<sup>30</sup> or has been determined to be responsible for the sexual harassment at the conclusion of a grievance process that complies with the process in policy 1726/4036/7237.<sup>31</sup> An employee-respondent, however, may be placed on administrative leave during the pendency of the grievance process if consistent with applicable state and federal laws.

Notwithstanding the limitation just described, respondents are subject to emergency removal as described in the next paragraph.

#### 5. Emergency Removal of Respondent from School or Employment<sup>32</sup>

Any respondent is subject to removal from the school system's education program and activities, or any part of the program or activities, on an emergency basis if a school-based threat assessment team conducts an individualized safety and risk analysis and determines that removal is justified because the person poses an immediate health or safety threat to any person arising from the allegations of sexual harassment. A removal under this subsection includes a transfer of a student to an alternative education program consistent with policy 3470/4305, Alternative Learning Programs/Schools. A schedule change, and/or removing a student from an extracurricular activity is also considered a removal under this subsection where such action would not otherwise constitute a supportive measure.

The emergency removal may take place regardless of whether a formal complaint has been filed. However, any such removal must be consistent with federal and state law, including any applicable law protecting the rights of individuals with disabilities. The respondent shall receive notice of the removal and an opportunity to challenge the decision in an informal hearing with the superintendent or designee immediately following the removal.

An employee may be placed on administrative leave<sup>33</sup> with or without pay during the pendency of the grievance process set out in policy 1726/4036/7237, Title IX Sexual Harassment Grievance Process, if consistent with state law and in

<sup>30</sup> Omit the reference to informal processes if your LEA does not provide informal means of resolving Title IX complaints.

<sup>31</sup> Although the LEA cannot take disciplinary action against the respondent or other action that does not meet the definition of a support measure until the grievance process is complete, this does not bar all measures that place any burden on a respondent, but only those that "unreasonably burden" the respondent (or complainant). Thus, changing a respondent's class schedule or a "no contact" order may be an appropriate supportive measure if such measures do not unreasonably burden the respondent. OCR suggests the following measures that can be taken to protect the safety of parties and deter sexual harassment: a no-contact order, supervising the respondent, and informing the respondent of the board's policy against sexual harassment.

<sup>32</sup> We strongly recommend consultation with the board attorney before removing a student or employee under this provision to ensure the removal is consistent with state and federal law. The Title IX emergency removal requirements are found at 34 C.F.R. 106.44(c).

<sup>33</sup> Administrative leave is authorized at 34 C.F.R. 106.44(d).

accordance with any applicable requirements of state law.<sup>34</sup>

The superintendent or designee shall document all emergency removal decisions under this subsection, including the immediate threat to health or safety that justified the removal.

#### 6. Supportive Measures

Supportive measures will be available to both the complainant and respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures will remain confidential to the extent that maintaining such confidentiality does not impair the ability to provide the supportive measures. The Title IX coordinator is responsible for coordinating the effective implementation of supportive measures.<sup>35</sup>

### E. GRIEVANCE PROCESS FOR FORMAL COMPLAINTS

The grievance process for formal complaints of sexual harassment under this policy is set out in policy 1726/4036/7237, Title IX Sexual Harassment Grievance Process. The policy also provides an informal resolution process for complainants who seek an alternate means of resolution to their complaint.<sup>36</sup>

As described in subsection D.3 above, the Title IX coordinator may also initiate the grievance process, as needed.

### F. RECORDS<sup>37</sup>

The Title IX coordinator shall create and maintain for a period of seven years records of all reports and formal complaints of sexual harassment. For each report or formal complaint, the coordinator shall document the following:<sup>38</sup>

1. any actions, including any supportive measures, taken in response to the report or formal complaint;

<sup>34</sup> G.S. 115C-325 and -325.5 limit certain employee suspensions to 90 days. However, the time period for completing the grievance process established in policy 1726/4036/7237 is 120 days. It may be advisable or necessary to condense the grievance process timeline in some cases when an employee is put on administrative leave.

<sup>35</sup> The Title IX coordinator's duty to coordinate the implementation of supportive measures is required by 34 C.F.R. 106.30.

<sup>36</sup> Omit the reference to informal resolution if the board does not provide an informal process in policy 1726/4036/7237 for the resolution of formal complaints of sexual harassment.

<sup>37</sup> In addition to the recordkeeping requirements described in this section, there are additional recordkeeping requirements related to formal complaints described in policy 1726/4036/7237, Title IX Sexual Harassment Grievance Process.

<sup>38</sup> The documentation described is required by 34 C.F.R. 106.45(b)(10)(ii).

2. that school officials have taken measures that are designed to restore or preserve equal access to the school system's education program and activities;
3. why school officials believe their response to the report or complaint was not deliberately indifferent; and
4. if supportive measures were not provided to the complainant, why that was not clearly unreasonable in light of the known circumstances.

In conjunction with the superintendent, the Title IX coordinator shall also maintain for seven years all materials used to train the Title IX coordinator, 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.<sup>39</sup>

Legal References: 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); G.S. 115C-335.5; *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>

Cross References: Title IX Nondiscrimination on the Basis of Sex (policy 1720/4030/7235), Title IX Sexual Harassment Grievance Process (policy 1726/4036/7237), Staff-Student Relations (policy 4040/7310), Child Abuse and Related Threats to Child Safety (policy 4240/7312), Bullying and Harassing Behavior Prohibited (policy 4329/7311), Discrimination and Harassment in the Workplace (policy 7232)

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<sup>39</sup> 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.