

Effective Date: August 1, 2024  
Updated: December 19, 2024

**Administrative Procedure B: Title IX Sex Based Harassment and Retaliation**  
(Attachment for Policies 248 and 348)

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The District has adopted these procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

*SCOPE:* The Grievance Procedures contained in this document are only applicable to alleged incidents that occur on or after August 1, 2024. For alleged incidents of sex discrimination, sex-based harassment, and/or retaliation occurring prior to August 1, 2024, the policy and procedures in place at the time of the alleged incident apply. Applicable versions of those policies and procedures are available from the Title IX Coordinator and at <https://www.philasd.org/schoolboard/policies/>

All reports or complaints of discrimination, harassment, or retaliation, *other than Title IX sex discrimination or harassment*, shall follow the complaint and grievance process established in the relevant policy and its administrative procedures and its administrative procedures.

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**I. Purpose**

The School District of Philadelphia (“District”) is committed to providing an educational and employment environment that is free from sex discrimination, sex-based harassment, and retaliation for engaging in protected activity as required by Title IX of the Education Amendments of 1972.<sup>1</sup>

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

**II. Notice of Nondiscrimination**

District does not discriminate against any employee, applicant for employment, or student, on the basis of actual or perceived sex.

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<sup>1</sup> 34 C.F.R. Part 106

Board policies 248 and 348 cover sex discrimination in both employment and access to educational opportunities. Therefore, any member of the District community whose acts deny, deprive, unreasonably interfere with or limit the education or employment, and/or social access, benefits, and/or opportunities of any member of the District community, guest, or visitor on the basis of that person’s actual or perceived sex, is in violation of Board policies 248 and 348.

The District will promptly and effectively address any such discrimination of which it has Knowledge/Notice using the resolution process in the Sex Discrimination, Sex-Based Harassment, and Retaliation Procedures.

### III. **Title IX Team Contacts**

The District has appointed Tomás Hanna as the District’s Title IX Coordinator who is assisted by two Deputy Title IX Coordinators, one for students and one for employees (collectively, “Administrator”). Together they coordinate the District’s compliance with federal, state, and local sex discrimination laws and ordinances:

*For sex discrimination, sex-based harassment, and retaliation allegations:*

<b>Title IX Coordinator, Tomás Hanna Associate Superintendent</b>	
<p><b>Reporting complaints related to students</b></p> <p style="text-align: center;">Student Title IX Coordinator Andrea Prince, Compliance Officer/Title IX Coordinator</p> <ol style="list-style-type: none"> <li>1. Completing the <a href="#">online Bullying Harassment and Discrimination Reporting form</a>;<sup>2</sup> or</li> <li>2. Calling the Bullying/Harassment hotline at 215-400-SAFE; or</li> <li>3. Submitting a complaint via <a href="#">Safe2Say</a>;<sup>3</sup> or</li> <li>4. Emailing the Compliance Officer/Title IX Coordinator directly at <a href="mailto:antiharassment@philasd.org">antiharassment@philasd.org</a>; or</li> </ol>	<p><b>Reporting complaints related to employees</b></p> <p style="text-align: center;">Employee Title IX Coordinator Leta Johnson-Garner, Interim Deputy, Employee Evaluations and Relations</p> <ol style="list-style-type: none"> <li>1. Call: 215-400-4640</li> <li>2. Email: <a href="mailto:EmployeeTitleIXcomplaints@philasd.org">EmployeeTitleIXcomplaints@philasd.org</a></li> <li>3. Use the <a href="#">Employee Discrimination, Harassment, and Sexual Misconduct Reporting and Investigation form</a>;<sup>4</sup></li> <li>4. Making a general report verbally or in writing to their supervisor; or</li> </ol>

<sup>2</sup> The online Bullying, Harassment, and Discrimination Reporting form is available at <https://pareporting.hibster.com/Pages/Home.aspx?id=241>

<sup>3</sup> The Safe2Say complaint form is available at [safe2saypa.org](http://safe2saypa.org)

<sup>4</sup> The Employee Discrimination, Harassment, and Sexual Misconduct Reporting and Investigation form is available at <https://www.philasd.org/employeerelations/forms/employee-discrimination-and-harassment-reporting-and-investigation-form/>

<p>5. Reporting the incident to the building principal or designee, or to any other member of the school staff, including teachers, guidance counselors, bilingual counseling assistants (BCAs), coaches, and Title IX Coordinator or designees.</p>	<p>Upon receipt of a report, all supervisors and employees shall immediately notify the Employee Title IX Coordinator at <a href="mailto:employeerelations@philasd.org">employeerelations@philasd.org</a>.</p>
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Collectively, these individuals are responsible for providing comprehensive sex discrimination education and training; coordinating the District’s timely, thorough, and fair response, investigation, and resolution of all potential policy violations; and monitoring the effectiveness of Policies 248 and 348 and related procedures to ensure an education and employment environment free from sex discrimination, sex-based harassment, and retaliation.

District recognizes that allegations under Policies 248 and 348 may also involve other District policies and may require the simultaneous attention of multiple District offices and schools.

Accordingly, all District offices and schools will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable District policies.

**IV. External Contact Information**

Concerns about the District’s application of Board policies 248 and 348 and compliance with Title IX of the Education Amendments of 1972 may also be addressed to:

Office for Civil Rights,  
**Philadelphia Office**  
 U.S. Department of Education  
 The Wanamaker Building  
 100 Penn Square East, Suite 515  
 Philadelphia, PA 19107-3323  
 Telephone: (215) 656-8541  
 Facsimile: (215) 656-8605  
 Email: [OCR.Philadelphia@ed.gov](mailto:OCR.Philadelphia@ed.gov)

For Complaints involving employee-on-employee conduct: [Equal Employment Opportunity Commission](#) (EEOC)

## V. Mandated Reporting

All employees share responsibility for avoiding, discouraging, and reporting any form of prohibited sex discrimination, sex-based harassment, retaliation under applicable Board policies. All District employees are Mandated Reporters<sup>5</sup> and are expected to promptly report all known details of actual or suspected sex discrimination, sex-based harassment and retaliation to the Title IX Coordinator immediately as set forth below. Supportive measures may be offered as the result of such disclosures without formal District action.

Failure of an employee to report an incident of sex discrimination, sex-based harassment, or retaliation of which they become aware is a violation of Board policy and may result in disciplinary action for failure to comply/failure to report. This also includes situations when a harasser is an employee. Such individuals are obligated by Title IX to report their own misconduct, and failure to do so is in violation of Board policies 248 and/or 348.

A Mandated Reporter who is themselves a target of discrimination, harassment, or other misconduct under Board policies is not required to report their own experience, though they are encouraged to do so.

In addition, Complainants may speak with individuals unaffiliated with District without concern that Board policies 248 and 348 will require them to disclose information to the school without permission:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

## VI. Scope

These Resolution Procedures are only applicable to alleged incidents that occur on or after August 1, 2024. For alleged incidents of sex discrimination or sexual harassment occurring prior to August 1, 2024, the policy and procedures in place at the time of the alleged incident apply. Applicable versions of those policies and procedures are available from the Title IX Coordinator or Deputy Title IX Coordinator.

Board policies 248 and/or 348 apply to all students, employees, and other individuals participating in or attempting to participate in the District's program or activities, including education and employment.

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<sup>5</sup> Not to be confused with those mandated by state law to report child abuse to appropriate officials, though these responsibilities will overlap with those who have mandated reporting responsibility under these reporting requirements.

Board policies 248 and/or 348 prohibits all forms of sex discrimination, and may be applied to incidents, to patterns, and/or to school culture/climate, all of which may be addressed in accordance with these procedures.

## **VII. Jurisdiction**

Board policies prohibiting sex discrimination apply to the District's education programs and activities (including locations, events, or circumstances in which the District exercises substantial control over both the Respondent and the context in which the conduct occurred, including but not limited to events occurring on school property, during any school-related or school-sponsored program or activity, and on school-sponsored transportation) and circumstances where the District has disciplinary authority.

The Board policies may also apply to the effects of out-of-school misconduct, including online conduct, that limit or deny a person's access to District's education program or activities (including conduct that occurs off-grounds, virtually, and/or after-hours (including weekends), if the conduct materially impacts the school community (meaning the conduct has a noticeable or considerable impact).

For disciplinary action to be issued, the Respondent must be a District student or employee at the time of the alleged incident. If the Respondent is unknown or is not a member of the District community, the Administrator will offer to assist the Complainant in identifying appropriate school and local resources and support options and will implement appropriate supportive measures and/or remedial measures. The District can also assist in contacting law enforcement if the individual would like to file a police report about criminal conduct.

## **VIII. Supportive Measures**

The District will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged sex discrimination, sex-based harassment, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to the District's education program or activity, including measures designed to protect the safety of all Parties and/or the District's educational environment and/or to deter sex discrimination, sex-based harassment, and/or retaliation.

The Administrator promptly makes supportive measures available to the Parties upon receiving Notice/Knowledge or a Complaint. At the time that supportive measures are offered, if a Complaint has not been filed, the District will inform the Complainant,<sup>6</sup> in writing, that they may file a Complaint with the District either at that time or in the future. The Administrator will work

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<sup>6</sup> Throughout this document, the terms "party," "Parties" (if both are students), "Complainant," and "Respondent" include the parent(s)/guardian(s) when the term refers to a minor student.

with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

The District will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the District's ability to provide those supportive measures. District will act to ensure as minimal an academic/occupational impact on the Parties as possible. The District will implement measures in a way that does not unreasonably burden any party.

Supportive measures may include, but are not limited to:

1. Counseling or Employee Assistance Program,
2. Extensions of deadlines or other course-related adjustments,
3. Changes in work locations,
4. Increased security measures or protocols,
5. Referrals to domestic violence or rape crisis programs,
6. Referrals to community health resources including counseling resources.
7. Parent/student conferences;
8. Behavioral supports, such as, check in/check out, and Positive Behavior Support Plans;
9. Increased adult supervision in hot spot areas and during transition times (e.g. admission and dismissal, classroom changes, lunch, recess);
10. Social skills training, including role playing;
11. Positive incentives and reinforcements for appropriate or improved behavior;
12. Development of a safety plan
13. Daily report.

Supportive measures may also include assessments or evaluations to determine eligibility for special education or related services, or the need to review an Individualized Education Program ("IEP") or Section 504 Service Agreement based on a student's behavior. This could include, but is not limited to, a manifestation determination or Functional Behavioral Assessment ("FBA"), in accordance with applicable law, regulations, or Board policy. Supports may need to be changed to meet a student's evolving needs and may span multiple school years.

The Parties are provided with a timely opportunity to seek modification or reversal of the District's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so must be made in writing to the applicable Deputy Title IX Coordinator. An impartial employee other than the employee who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the Title IX regulatory definition of supportive measures. The applicable Deputy Title IX Coordinator or designee will also provide the Parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances materially change. The applicable Deputy Title IX Coordinator or designee typically renders decisions on supportive measures within three (3) business days of receiving a request and provides a written determination to the impacted party(ies) and the Title IX Coordinator.

## **IX. Online Harassment and Misconduct**

District policies are written and interpreted broadly to include online occurrences of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the District's education program and activities, or when they involve the use of District networks, technology, or equipment.

## **X. Prohibited Conduct**

All conduct definitions below encompass actual and/or attempted violations of Board policy under Title IX.

Any of the following types of conduct will be considered alone as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be investigated when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice versa. Patterns may exist based on similarity of focus or offense or other factors. Where a pattern is found, it can be the basis to enhance the disciplinary determination, accordingly.

### **A. Sex Discrimination**

Sex discrimination is different treatment with respect to a person's employment or participation in an education program or activity based, in whole or in part, upon the person's actual or perceived sex.

Discrimination can take two primary forms:

- 1) Disparate Treatment Discrimination:
  - o Any intentional differential treatment of a person or persons that is based on a person's actual or perceived sex and that:
    - Excludes a person from participation in;
    - Denies a person benefits of; or
    - Otherwise adversely affects a term or condition of a person's participation in a District program or activity.
- 2) Disparate Impact Discrimination:
  - o Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on the basis of sex that:
    - Excludes a person from participation in;
    - Denies a person benefits of; or

- Otherwise adversely affects a term or condition of a person's participation in a District program or activity.

## **B. Sex-Based Harassment Applicable under Title IX, Title VII**

**Sex-based harassment:** Sex-based Harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex,<sup>7</sup> including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; sexual assault, dating violence, domestic violence, and stalking.

### **1) Quid Pro Quo:**

- an employee agent, or other person authorized by the District,
- to provide an aid, benefit, or service under the District's education program or activity,
- explicitly or impliedly conditioning the provision of such aid, benefit, or service,
- on a person's participation in unwelcome sexual conduct.

### **2) Hostile Environment Harassment:**

- unwelcome sex-based conduct, that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive, that it limits or denies a person's ability to participate in or benefit from the District's education program or activity

Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- (i) The degree to which the conduct affected the Complainant's ability to access the District's education program or activity;
- (ii) The type, frequency, and duration of the conduct;
- (iii) The parties' ages, roles within the District's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct; and
- (iv) The location of the conduct and the context in which the conduct occurred;

### **(3) Specific offenses.**

- (i) Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
- (ii) Dating violence meaning violence committed by a person:

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<sup>7</sup> "On the basis of sex" means conduct that is sexual in nature, or that is directed to the Complainant because of his/her/their actual or perceived sex or gender identity.



- (A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - (1) The length of the relationship;
    - (2) The type of relationship; and
    - (3) The frequency of interaction between the persons involved in the relationship;
- (iii) Domestic violence meaning felony or misdemeanor crimes committed by a person who:
- (A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the District, or a person similarly situated to a spouse of the victim;
  - (B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
  - (C) Shares a child in common with the victim; or
  - (D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction; or
- (iv) Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- (A) Fear for the person's safety or the safety of others; or
  - (B) Suffer substantial emotional distress.
- For the purposes of this definition of stalking —
- Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
  - Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
  - Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

**C. Retaliation:**

- Adverse action, including intimidation, threats, coercion, or discrimination,
- against any person,
- by the District, a student, employee, or a person authorized by the District to provide aid, benefit, or service under the District's education program or activity,

- for the purpose of interfering with any right or privilege secured by law or Policy, or
- because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or Resolution Process under the Board Policy or applicable Procedures or in any other appropriate steps taken by the District to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

The exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for the District to pursue Policy violations against those who intentionally make materially false statements in the course of a resolution under the Board Policy. However, the determination of responsibility, by itself, is not enough to conclude that any party has intentionally made a false statement.

**D. Unauthorized Disclosure:<sup>8</sup>**

- Distributing or otherwise publicizing materials created or produced by the District during an investigation or Resolution Process except as required by law or as expressly permitted by the District; or
- publicly disclosing school/district work product that contains personally identifiable information without authorization or consent.

**XI. Standard of Proof**

The District uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that the District will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is in violation of Board Policy.

**XII. Reports/Complaints of Sex Discrimination, Sex-Based Harassment, and/or Retaliation**

A report provides notice to the District of an allegation or concern about sex discrimination, sex-based harassment, retaliation, or Other Prohibited Conduct and provides an opportunity for the Administrator to provide information, resources, and supportive measures. A Complaint provides notice to the District that the Complainant would like the District to start an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a report and may decide at a later time to make a Complaint. Reports or Complaints of sex discrimination, sex-based harassment, and/or retaliation may be made using any of the following options listed above in Section III.

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<sup>8</sup> Nothing in this section restricts the ability of the Parties to: obtain and present evidence, including by speaking to witnesses (as long as it does not constitute retaliation under this Policy), consult with their family members, confidential resources, or Advisors; or otherwise prepare for or participate in the Resolution Process.

A Complaint, receipt of Notice, or Knowledge of suspected child abuse (including child sexual abuse) requires an immediate, mandated report to state officials, consistent with Policy 317.

### **XIII. Time Limits on Reporting**

There is no time limitation on providing Notice/Complaints to the District. However, if the Respondent is no longer a student or employee and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on Notice/Complaints significantly impacted by the passage of time (including, but not limited to, policy changes) is at the District's discretion; it may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

### **XIV. Consent**

As used in document, the following definition and understandings apply:

**Consent:** knowing, and voluntary, and clear permission by word or action to engage in sexual activity. Children less than 13 years old cannot grant consent to sexual activity. Teens between the ages of 13 and 15 cannot consent to sexual activity with anyone who is four or more years older than them. People ages 16 and older can legally consent to sexual activity with anyone they choose, as long as the other person does not have authority over them as defined by Pennsylvania law.<sup>9</sup>

It is the responsibility of each party to determine that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent is evaluated from the perspective of what a reasonable person would conclude are commonly understood words or actions.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, sexual activity should cease within a reasonably immediate time.

Silence or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

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<sup>9</sup> See

<https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=31&sctn=24&subscn=2>

Consent to some sexual contact (such as kissing or touching) does not mean there is consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not enough to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected.

**XV. False Allegations and Evidence**

Making false or misleading accusations under this Policy will be addressed through appropriate disciplinary action. This does not include allegations that are thought to be true but are ultimately shown to be wrong or do not result in a determination of a Board Policy violation.

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or intentionally mislead an official conducting an investigation or resolution process can be disciplined under appropriate Board policies.

**XVI. Confidentiality/Privacy**

The District makes every effort to protect the Parties' privacy. In situations involving suspected child abuse, the District will immediately report the matter as required by child abuse reporting/Mandated Reporting under State law consistent with Policy 317. In most other circumstances, the District will not share the name of any individual who has made a Complaint of sex discrimination, sex-based harassment, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of sex discrimination, sex-based harassment, or retaliation; any Respondent; or any witness, except as allowed by, or to fulfill the purposes, of related laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation, or resolution proceeding under Board policies and procedures.<sup>10,11</sup>

**XVII. Unauthorized Disclosure of Information**

Parties and Advisors are prohibited from sharing information obtained by the District through the Resolution Process to the extent that information is the work product of the District (meaning it has been created or gathered by the District for purposes of its investigation and resolution of a Complaint), without authorization. It is also a violation of Board Policy to publicly disclose school/District work product that contains a Party or witness's personally identifiable information without authorization or consent. Violation is subject to significant disciplinary consequences.

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<sup>10</sup> 20 U.S.C. 1232g

<sup>11</sup> 34 C.F.R. § 99

## **XVIII. Independence and Conflicts of Interest**

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator or Deputy Title IX Coordinators, contact the District Superintendent. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other employee or investigator should be raised with the Title IX Coordinator.

### **RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF PROHIBITED SEX-BASED HARASSMENT, AND RETALIATION (Hereinafter the “Resolution Process”)**

#### **1. Overview**

District will act on any Notice, Complaint, or Knowledge of a potential violation of the Board Policy prohibiting Sex-Based Harassment or Retaliation that the Administrator or any other Mandated Reporter receives by applying the Resolution Process below.

The procedures below apply to all allegations of sex-based harassment or retaliation involving students, employees, or third parties.

#### **2. Notice/Complaint**

Upon receipt of Notice, a Complaint, or Knowledge of an alleged Policy violation, the Administrator will initiate a prompt initial evaluation to determine the District’s next steps. If applicable, the Administrator will immediately report or direct the reporting employee to report suspected child abuse consistent with Policy 317. The Administrator will also contact the Complainant/source of the Notice to offer supportive measures, provide information regarding resolution options, and determine how they wish to proceed.

#### **3. Related Misconduct**

If there are potential violations of other Board policies that occur in connection with alleged violations of sex-based harassment and/or retaliation or that come to light through the course of the investigation, for which it makes sense to provide one resolution for all allegations, the related allegations may be investigated along with the Title IX Complaint to be resolved jointly under these Grievance Procedures if the applicable Title IX Coordinator determines it is appropriate to do so. If not, all other allegations of misconduct unrelated to incidents covered by Board Policies 248 and 348 will typically be addressed separately through procedures described in the applicable Policy and/or its administrative procedures.

In addition to implementing these grievance procedures, the Title IX Coordinator or designee shall ensure that reported conduct which meets the definition of other laws, regulations, or Board policies is also appropriately reported in accordance with the applicable laws, regulations, or

Board policies, including but not limited to, incidents under the Safe Schools Act, reports of educator misconduct, threats, or reports of suspected child abuse.

#### **4. Initial Evaluation**

The Administrator conducts an initial evaluation, typically within seven (7) business days of receiving Notice/Complaint/Knowledge of alleged misconduct.<sup>12</sup> The initial evaluation typically includes:

- Assessing whether the reported conduct may reasonably constitute a violation of the Board Policies prohibiting such conduct.
- Determining whether District has jurisdiction over the reported conduct.
- Offering and coordinating supportive measures for the Complainant.<sup>13</sup>
- Offering and coordinating supportive measures for the Respondent, as applicable.
- Notifying the Complainant of the available resolution options, including a supportive and remedial response and the Resolution Process described below.
- Determining whether the Complainant wishes to initiate a Complaint.
- Notifying the Respondent of the available resolution options, including a supportive and remedial response and the Resolution Process described below, if a Complaint is made.

#### ***Helping a Complainant to Understand Resolution Options***

If the Complainant indicates they wish to make a Complaint, the Administrator will help to facilitate the Complaint.

The Administrator will seek to abide by the wishes of the Complainant but may have to take an alternative approach depending on their analysis of the situation.

If the Administrator has determined that Policy 248 or 348 applies to the Complaint and that the District has jurisdiction, they will refer the matter to the appropriate Investigator, will provide the Parties with a Notice of Investigation and Allegation(s) (NOIA), and will initiate an investigation consistent with these Procedures.

#### ***Administrator Authority to Initiate a Complaint***

If the Complainant does not wish to file a Complaint, the Administrator, who has ultimate discretion as to whether a Complaint is made, will offer supportive measures and determine

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<sup>12</sup> If circumstances require, the President or Administrator will designate another person to oversee the Resolution Process should an allegation be made about the Administrator or the Administrator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

<sup>13</sup> Throughout these procedures, the terms “party,” “Parties” (if both are students), “Complainant,” and “Respondent” include the parent(s)/guardian(s) when the term refers to a minor student.

whether to make a Complaint themselves. The Administrator will consider the following non-exhaustive factors to determine whether to file a Complaint:

- The Complainant's request not to initiate a Complaint.
- The Complainant's reasonable safety concerns regarding initiating a Complaint.
- The risk that additional acts of sex discrimination would occur if a Complaint were not pursued.
- The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a Respondent from the school/district or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.
- The age and relationship of the Parties, including whether the Respondent is a District employee.
- The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals.
- The availability of evidence to assist a Decision-maker in determining whether sex discrimination occurred.
- Whether the District could end the alleged sex discrimination and prevent its recurrence without initiating its resolution process.

When the Administrator initiates a Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged conduct that could constitute a violation of this Policy.

## **5. Dismissal**

The Title IX Coordinator or designee may dismiss a Complaint at any time during the investigation or Resolution Process if one or more of the following grounds are met:

- 1) The District is unable to identify the Respondent after taking reasonable steps to do so;
- 2) The Respondent is not participating in the District's education program or activity and is not employed by the District;
- 3) The Complainant voluntarily withdraws any or all of the allegations in the complaint and the Title IX Coordinator declines to initiate a complaint, or
- 4) The District determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination, harassment or retaliation.

A Decision-maker can recommend dismissal to the Title IX Coordinator or designee if they believe the grounds are met. A Complainant who decides to withdraw a Complaint may later request to reinstate or refile it.

Upon dismissal, the District will promptly notify the Complainant of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the District will also notify the Respondent of the dismissal and the basis for the dismissal promptly following notification to the Complainant, or simultaneously if notification is in writing.

## **6. Appeal of Dismissal**

The Complainant may appeal a dismissal of their Complaint. The Respondent may also appeal the dismissal of the Complaint if dismissal occurs after the Respondent has been made aware of the allegations. All dismissal appeal requests must be filed within three (3) business days of the notification of the dismissal.

The applicable Deputy Title IX Coordinator will notify the Parties of any appeal of the dismissal. If, however, the Complainant appeals, but the Respondent was not notified of the Complaint, the applicable Deputy Title IX Coordinator must then provide the Respondent with a NOIA and will notify the Respondent of the Complainant's appeal with an opportunity to respond.

The grounds for dismissal appeals are limited to:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was decided; and
- The Title IX Coordinator or designee, 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 would change the outcome.

The appeal request should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. Upon receipt of a written dismissal appeal request from one or more Parties, the Title IX Coordinator or designee will share the request with all other Parties and provide three (3) business days for other Parties and the Title IX Coordinator or designee to respond to the request. At the conclusion of the response period, the Title IX Coordinator or designee will forward the appeal, as well as any response provided by the other Parties and/or the Title IX Coordinator or designee to the Dismissal Appeal Officer for consideration.

The Dismissal Appeal Office may either:

- 1) Deny the request if the information provided does not meet any of the appeal grounds
- 2) Affirm the request and reinstate the Complaint for resolution under the Policy

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Officer has three (3) business days to review and decide on the appeal, though extensions can be granted at the Title IX Coordinator or designee's discretion, and the Parties will be notified of any extension. Appeal decisions are deferential to the original



determination, making changes only if there is a compelling justification to do so.

## **7. Emergency Removal of a Student**

The District may emergency remove a student accused of Sex-based Harassment upon receipt of Notice/Knowledge, a Complaint, or at any time during the Resolution Process. Prior to an emergency removal, District will conduct an individualized risk assessment and may remove the student if that assessment determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies such action.<sup>14</sup>

This risk analysis is overseen by the Student Title IX Coordinator and may be completed in conjunction with school/District employees, or a third party trained to conduct violence risk assessments.

This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act. If the Respondent is an identified student with a disability, or thought to be disabled, the Student Title IX Coordinator shall contact the school's Director of Special Education to coordinate the required actions in accordance with Board policy.

## **8. Placing an Employee on Leave**

The District can act to reassign an employee Respondent accused of sex discrimination, sex-based harassment, or retaliation from its education program or activities, partially or entirely, on an emergency basis under existing procedures when warranted to address an immediate threat to the health, well-being, or safety of an individual or a school community. Emergency reassignment must be approved by Deputy, Employee and Labor Relations.

An accused nonstudent District employee may be placed on administrative leave or administrative reassignment during the pendency of the grievance process consistent with all rights under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, and in accordance with state law and regulations, Board policy, and an applicable collective bargaining agreement or individual contract.

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<sup>14</sup> If applicable the Administrator will also consult with one or more members, as appropriate, of the student's IEP team, or other relevant individual (e.g., Special Education Coordinator) if any, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision, if any, to determine how to comply with the requirements of federal disability laws.

## **9. Counter-Complaints**

The District is obligated to ensure that the Resolution Process is not used for retaliatory purposes. Although the District permits counter-complaints, the Administrator will use an initial evaluation, described above, to assess whether the allegations in the counter-complaint are made in good faith. When counter-complaints are not legitimate, they will not be permitted. They will be considered potentially retaliatory and may constitute Board Policy violation.

Counter-complaints determined to have been reported in good faith will be processed using the Resolution Process below. At the Administrator's discretion, investigation of such claims may take place concurrently or after resolution of the initial Complaint.

## **10. Parent(s)/Guardian(s) of Minor Students in the Resolution Process**

### **A. Parent/Guardian Role in the Resolution Process**

Parent(s)/Guardian(s), have a right to attend Resolution Process meetings with their student, though the student is expected to answer questions on their own behalf, to the extent possible.

### **B. Records Shared with Parent(s)/Guardian(s)**

Parent(s)/Guardians(s) are entitled to the same opportunity as their student to access relevant evidence, and/or the same written investigation report that accurately summarizes this evidence.

Parent(s)/Guardian(s) are expected to maintain the confidentiality of the records the District shares with them, per Section XV above addressing Confidentiality. Parent(s)/Guardian(s) may not disclose any District work product or evidence the District obtained solely through the Resolution Process for any purpose not explicitly authorized by District.

### **C. Parent/Guardian Expectations**

The District generally expects Parent(s)/Guardian(s) to adjust their schedule to allow them to attend District meetings/interviews when planned, but the District may change scheduled meetings/interviews to accommodate a Parent(s)/Guardian(s) inability to attend, if doing so does not cause an unreasonable delay.

The District may also make reasonable provisions to allow a Parent(s)/Guardian(s) who cannot be present in person to attend a meeting/interview by telephone, video conferencing, or other similar technologies.

Any Parent/Guardian who oversteps their role as defined by the Policy, who shares

information or evidence in a manner inconsistent with the Policy, or who refuses to comply with the District's established rules of decorum will be warned. If the Parent/Guardian continues to disrupt or otherwise fails to respect the limits of their role, the meeting/interview may be ended, or other appropriate measures implemented. Subsequently, the Administrator will determine how to address the Parent/Guardian's non-compliance and future role.

## **11. Notice of Investigation and Allegations (NOIA)**

Prior to an investigation, the Administrator will provide the Parties with a detailed written NOIA. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of allegations. For investigations that do not have an identifiable Respondent, the NOIA will be sent to the school/department/office/program head for the area/program being investigated.

The NOIA typically includes:

- A meaningful summary of all allegations
- The identity of the involved Parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies implicated
- A description of, link to, or copy of the applicable procedures
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence
- The name(s) of the Investigator(s), along with a process to notify the Title IX Coordinator or designee of any conflict of interest the Investigator(s) may have in advance of the interview process
- A statement that the District presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity during the review and comment period to inspect and review all relevant evidence
- A statement that retaliation is prohibited
- Information about the confidentiality of the process, including that the Parties may not share District work product obtained through the Resolution Process
- A statement that the Parties may have an Advisor of their choice who may accompany them through all steps of the Resolution Process
- A statement informing the Parties that the District's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Detail on how a party may request disability accommodations or other support assistance during the Resolution Process

- An instruction to preserve any evidence that is directly related to the allegations
- A statement that Parties who are members of a union are entitled to union representation throughout the process

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address(es) as indicated in official District records, or emailed to the Parties' District-issued email or designated accounts. Once mailed, emailed, and/or received in person, the notification will be presumptively delivered.

## **12. Resolution Timeline**

The District will provide for adequate, reliable, and impartial investigation of complaints. The investigation stage shall be concluded within ninety (90) calendar days but the investigator shall strive to complete the investigation as soon as possible. However, parties will be notified of any delay beyond ninety (90) calendar days and reasons for the delay. The Parties will receive regular updates on the progress of the Resolution Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

If a party or witness chooses not to participate in the Resolution Process or becomes unresponsive, the District reserves the right to continue it without their participation to ensure a prompt resolution. Non-participatory or unresponsive Parties retain the rights outlined in this Policy and the opportunity to participate in the Resolution Process.

The District may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. The District will promptly resume its Resolution Process as soon as feasible. During such a delay, District will implement and maintain supportive measures for the Parties as deemed appropriate.

District action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

## **13. Ensuring Impartiality**

Any individual materially involved in the administration of the Resolution Process, including the Title IX Coordinator or Deputy Title IX Coordinators, Investigator(s), and Decision-maker(s), may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator or designee will vet the assigned Investigator(s), Decision-maker(s),

and Appeal Decision-makers for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the Resolution Process, the Parties may raise a concern regarding bias or conflict of interest, and the Title IX Coordinator or Deputy Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another trained individual will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator or Deputy Title IX Coordinator, concerns should be raised with the District's Chief of Staff.

#### **14. Investigator Appointment**

Once an investigation is initiated, the Administrator appoints an Investigator(s) to conduct it. These Investigators may be employees of the District or any other properly trained Investigator, whether internal or external to the District's community.

#### **15. Witness Role and Participation in the Investigation**

Employees (not including Complainant and Respondent) are required to cooperate with and participate in the District's investigation and Resolution Process. Student witnesses and witnesses from outside the District community cannot be required to participate but are encouraged to cooperate with District investigations and to share what they know about a Complaint. Student witnesses may be accompanied by a parent/guardian for any interviews or meetings.

Interviews may be conducted in person, via online video platforms (e.g., Zoom, Microsoft Teams, FaceTime, WebEx), or, in limited circumstances, by telephone. The District will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

#### **16. Interview Recording**

It is standard practice for Investigators to create a record of all interviews pertaining to the Resolution Process, by recording, transcript, or written summary. The Parties may review copies of their own interviews upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

#### **17. Evidentiary Considerations**

The Investigator(s) and the Decision-maker(s) will only consider evidence that is deemed relevant and not otherwise impermissible.

Relevant Evidence is that which may aid in determining whether the allegation occurred, or whether the behavior constitutes a Policy violation.

Impermissible evidence is defined as evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless 1) evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct, or 2) is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent.

The fact of prior consensual sexual conduct occurred between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent or preclude a determination that sex-based harassment occurred.

Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

Within the limitations stated above, the investigation and determination can consider character evidence, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

### **18. Respondent Admits Responsibility**

At any point in the proceedings, if a Respondent elects to admit to the alleged violations and waive further process, the Decision-maker is authorized to accept that admission, adopt it as their finding/final determination, and administer disciplinary consequences. This would waive the Respondent's right to appeal. If the Respondent rejects the finding/final determination/disciplinary consequences, or does not admit to all conduct alleged, the Resolution Process continues to its conclusion. The Complainant retains their right to appeal a determination when a Respondent admits responsibility.

### **19. Investigation**

All investigations are thorough, reliable, impartial, prompt, and fair. They involve efforts to interview all relevant Parties and witnesses, obtaining relevant evidence, and identifying sources of expert information, as necessary.

After an interview, Parties and witnesses will be asked to verify the accuracy of the summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of the summary will be deemed to have been waived, and no changes will be permitted.

The District may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, when the allegations arise from the same

facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

The Investigator(s) typically does the following, if not already completed:

- Determine the identity and contact information of the Complainant.
- Assist the Title IX Coordinator or designee, if needed, with conducting a prompt initial evaluation to determine if the allegations indicate a potential Policy violation.
- Identify all offenses implicated by the alleged misconduct and notify the Complainant and Respondent of all specific policies implicated through the initial NOIA. The NOIA may be amended with any additional or dismissed allegations.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the Parties and witnesses.
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible.
- Interview the Complainant and the Respondent and conduct any necessary follow-up interviews with each.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes of the relevant evidence/testimony from their respective interviews and meetings.
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses. Document which questions were asked with a rationale for any changes or omissions in the investigation report.
- Where possible, complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide the Parties with regular status updates throughout the investigation.
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors with a list of witnesses whose information will be used to render a finding.
- Write a draft investigation report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation and party and witness interviews, and provides all relevant evidence.
- Provide the Parties and their respective Advisors an electronic copy of the draft investigation report as well as an opportunity to inspect and review all relevant evidence obtained as part of the investigation for a review and comment period of five (5) business days so that each party may meaningfully respond to the evidence. The Parties may elect to waive all or part of the review period.
- The Investigator may share the investigation report with the Title IX Coordinator or Deputy Title IX Coordinator and/or legal counsel for their review and feedback.

## **20. Administrative Resolution Process**

The Administrative Resolution Process consists of a hand-off of the investigation report and all

relevant evidence to the Decision-maker to make a finding and determine disciplinary consequences (if applicable).

The assigned Decision-maker will be a trained individual either internal or external to the school/district. Once the Decision-maker receives and reviews the file, they can recommend dismissal to the Administrator, if they believe the dismissal grounds are met.

The Administrative Resolution Process typically takes approximately ten (10) business days to complete, beginning with the Decision-maker's receipt of the Final Investigation Report and the evidence file. The Parties will be regularly updated on the timing and any significant deviation from this typical timeline.

- The Administrator will provide the Decision-maker, the Parties with the Final Investigation Report and the evidence file.
- The Decision-maker will review the Final Investigation Report, all appendices, and the evidence file.
- If the record is incomplete, the Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informal meetings with the Parties or any witnesses, if needed.
- Upon reviewing the relevant evidence, the Decision-maker may also choose to pose additional questions, in writing or via interview (e.g., in person or via video technology):
  - To the extent credibility is in dispute and relevant to one or more of the allegations, the Decision-maker may meet individually with the Parties and witnesses to question them in order to assess their credibility.
  - At their discretion, the Decision-maker may also meet with any party or witness to ask additional relevant questions that will aid the Decision-maker in making their findings.
- The Decision-maker will then apply the preponderance of the evidence standard to make a determination on each of the allegations and, if applicable, any associated sanctions.
- If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a Resolution Process at any time, and/or referring that information to another process for resolution.

## **21. Disciplinary Consequences**

Factors the Decision-maker may consider when determining disciplinary consequences and responsive actions include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the prohibited conduct
- The need for sanctions/responsive actions to prevent the future recurrence of sex discrimination, sex-based harassment, retaliation, and/or Other Prohibited



#### Conduct

- The need to remedy the effects of the prohibited conduct on the Complainant and the community
- The impact on the Parties
- The Respondent's acceptance of responsibility
- Any other information deemed relevant by the Decision-maker(s)

The disciplinary consequences will be implemented as soon as it is feasible once a determination is final, either upon the outcome of any appeal or the expiration of the window to appeal, without an appeal being requested.

The disciplinary consequences below are not exclusive of, and may be in addition to, other actions taken, or disciplinary consequences imposed, by external authorities.

#### **A. Student Disciplinary Consequences**

Violations of Board policy, including acts of retaliation as described in this policy, or knowingly providing false information, may result in disciplinary consequences or corrective actions under applicable Board policy and procedures.

Disciplinary or corrective action may include, but is not limited to, appropriate supports and interventions, which may include:

- Multi-tiered System of Supports ("MTSS");
- Positive Behavior Interventions & Supports ("PBIS");
- Student Assistance Program ("SAP");
- Counseling services;
- Parent meetings;
- Referrals to appropriate resources outside of the District;
- Loss of school privileges;
- Permanent transfer to another school building, classroom, or school bus;
- Exclusion from school-sponsored activities;
- Detention; and
- Referral to law enforcement officials.

#### **B. Employee Sanctions/Responsive/Corrective Actions**

Violations of Board policy, including acts of retaliation, may result in disciplinary consequences, up to and including termination, or other corrective actions, under applicable Board policy and procedures, or applicable collective bargaining agreements.

## **22. Notice of Outcome**

Within five (5) business days of the conclusion of the Resolution Process, the DecisionMaker provides the Parties with a written outcome notification. The outcome notification will specify the finding for each alleged Policy violation, all applicable disciplinary consequences that the District is permitted to share pursuant to Board policy, federal or state law, and a detailed rationale, written by the Decision-maker, supporting the findings to the extent the District is permitted to share under Board policy, federal or state law.

The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no party appeals.

The Decision Maker will provide the Parties with the outcome notification simultaneously, or without significant time delay between notifications. The written outcome notification may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official District records, or emailed to the Parties' District-issued or designated email account. Once mailed, emailed, and/or received in person, the outcome notification is presumptively delivered.

## **23. Withdrawal or Resignation Before Complaint Resolution**

### **A. Students**

Should a student Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If a student Respondent withdraws from the District, the Resolution Process may continue, or the Administrator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, District will still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged sex discrimination, sex-based harassment, and/or retaliation.

Regardless of whether the Complaint is dismissed or pursued to completion of the Resolution Process, the District will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sex discrimination, sex-based harassment, and/or retaliation.

### **B. Employees**

If an employee Respondent leaves their employment with the District with unresolved allegations pending, the Resolution Process may continue, or the Administrator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, the District may still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged sex discrimination, sex-based harassment, and/or retaliation.

## **24. Appeal of the Determination**

The Administrator will designate an Appeal Decision-maker to hear the appeal. The Appeal Decision-maker(s) will not have been previously involved in the Resolution Process for the Complaint.

### **A. Appeal Grounds**

Appeals are limited to the following grounds:

- 1) A procedural irregularity that would change the outcome.
- 2) New evidence that would change the outcome and that was not reasonably available at the time the determination regarding responsibility was made.
- 3) The Administrator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the specific Complainant or Respondent that would change the outcome.

### **B. Request for Appeal**

Any party may submit a written request for appeal (“Request for Appeal”) to the Administrator within fifteen (15) calendar days of the delivery of the Notice of Outcome.

The Request for Appeal will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This is not a review of the merits of the appeal, but rather a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.

If the Request for Appeal does not provide information that meets the grounds set forth above, the request will be denied by the Appeal Decision-maker, and the Parties will be simultaneously notified in writing of the denial and the rationale.

If any of the information in the Request for Appeal meets the grounds set forth above, then the Appeal Decision-maker will notify all Parties, the Administrator, and, when appropriate, the Investigator(s) and/or the original Decision-maker.

All other Parties, the Administrator, and, when appropriate, the Investigator(s) and/or the Decision-maker will be provided a copy of the Request for Appeal with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. The Appeal Decision-maker will forward all responses, if any, to all Parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that Request for Appeal will be reviewed by the Appeal Decision-maker to determine if it meets the

grounds set forth above and will either be approved or denied. If approved, it will be forwarded to the party who initially requested an appeal, the Administrator, and the investigator(s) and/or original Decision-maker, as necessary, who will submit their responses, if any, within five (5) business days. Any such responses will be circulated for review and comment by all Parties. If denied, the Parties will be notified accordingly, in writing.

No party may submit any new Requests for Appeal after this time period.

### **C. Appeal Determination Process**

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. Appeal decisions are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions apply the preponderance of the evidence standard of proof.

The Appeal Decision-maker may consult with the Administrator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Administrator will maintain documentation of all such consultation.

### **D. Appeal Outcome**

An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-maker or the Administrator (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new determination with new trained individuals serving in the Investigator and Decision-maker roles.

A Notice of Appeal Outcome letter (“Appeal Outcome”) will be sent to all Parties simultaneously, or without significant time delay between notifications. Written notification may be delivered by one or more of the following methods: in person, mailed to the Parties’ local or permanent address as indicated in official institutional records, or emailed to the Parties’ District-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, the Appeal Outcome will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

If a remand results in a new determination that is different from the appealed determination, that new determination can be appealed, once, on any of the available appeal grounds.

### **E. Discipline Status During the Appeal**

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

If any of the disciplinary consequences are to be implemented immediately post-determination, but pre-appeal, then the emergency removal procedures (detailed above) for a “show cause” meeting on the justification for doing so must be permitted within two (2) business days of implementation.

## **25. Long-Term Remedies/Other Actions**

Following the conclusion of the Resolution Process, and in addition to any disciplinary consequences implemented, the Administrator may implement additional long-term remedies or actions with respect to the Parties and/or the District community that are intended to stop sex discrimination, sex-based harassment, and/or retaliation, remedy the effects, and prevent recurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Classroom assignment adjustments
- Training for the individual and/or the community
- Alternative placement
- Permanent alteration of work arrangements for employees
- Climate surveys
- Policy modification and/or training
- Provision of transportation assistance
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Administrator, certain long-term supportive measures may also be provided to the Parties even if no Policy violation is found.

When no Policy violation is found, the Administrator will address any remedies the District owes the Respondent to ensure no effective denial of educational access.

The District will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair the District’s ability to provide these services.

## **26. Failure to Comply with Disciplinary Consequences or Responsive Actions**

All Respondents are expected to comply with the assigned disciplinary consequences, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s), including the Appeal Decision-maker.

Failure to abide by the disciplinary consequences/action(s) imposed by the date specified, whether by refusal, neglect, or for any other reason, may result in additional disciplinary consequences/action(s), including suspension, expulsion, and/or termination from the District.

Supervisors are expected to enforce the completion of disciplinary consequences/responsive actions for their employees.

## **27. Recordkeeping**

For a period of at least seven (7) years following the conclusion of the Resolution Process, the District will maintain records of:

- Each sex discrimination, sex-based harassment, and retaliation resolution process, including any Final Determination regarding responsibility or appeal, and any audio or audiovisual recording or transcript required under federal regulation.
- Any disciplinary consequences imposed on the Respondent.
- Any supportive measures provided to the Parties and any remedies provided to the Complainant or the community designed to restore or preserve equal access to the District's education program or activity.
- Any appeal and the result therefrom.
- All materials used to train the Administrator, Title IX Coordinator and designees, Investigators, Decision-makers, Appeal Decision-makers and any person who is responsible for implementing the District's Resolution Process, or who has the authority to modify or terminate supportive measures. District will make these training materials available for review upon request.
- All materials used to train all employees consistent with the requirements in the Title IX Regulations.

The District will also maintain any and all records in accordance with federal and state laws.

## **28. Accommodations and Support During the Resolution Process**

### **A. Disability Accommodations**

District is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the District's Resolution Process.

Anyone needing such accommodations or support should contact the Administrator, who will work with other District Administrators as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

## **B. Other Support**

The District will also address reasonable requests for support for the Parties and witnesses, including:

- Language services/Interpreters
- Access and training regarding use of technology throughout the Resolution Process
- Other support as deemed reasonable and necessary to facilitate participation in the Resolution Process

## **29. Revisions**

The District reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If laws or regulations change or court decisions alter the requirements in a way that impacts this document, the District's policies and procedures will be construed to comply with the most recent laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protections of the background federal and state laws that frame such policies and codes, generally.

## **APPENDIX A: DEFINITIONS**

The following definitions apply to these procedures:

- ***Administrator.*** The person with primary responsibility for overseeing and enforcing the the District's compliance with Title IX. As used in document, the "Administrator" also includes the Deputy Title IX Coordinators and other designee(s).
- ***Appeal Decision-maker.*** The person who accepts or rejects a submitted appeal request, determines whether any of the appeal grounds are met, and directs responsive action(s) accordingly.
- **Complainant:**
  - (1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or

(2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX and who was participating or attempting to participate in the District's education program or activity at the time of the alleged sex discrimination.

- **Complaint:** An oral or written request to the District that objectively can be understood as a request for the District to investigate and make a determination about alleged discrimination under Title IX or its regulations.
- **Decision-maker.** The person or panel who reviews evidence, determines relevance, and makes the Final Determination of whether Policy has been violated and/or assigns sanctions.
- **Disciplinary Consequence.** A consequence imposed on a Respondent who is found to have violated Board Policy.
- **Education Program or Activity.** Locations, events, or circumstances where the District exercises substantial control over the context in which the sex discrimination, sex-based harassment, and/or retaliation occurs.
- **Employee.** A person employed by District either full- or part-time.
- **Final Determination.** A conclusion by the standard of proof that the alleged conduct did or did not violate Board Policy.
- **Investigator.** The person(s) authorized by District to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report.
- **Knowledge.** When District receives Notice of conduct that reasonably may constitute sex discrimination, sex-based harassment, or retaliation in its Education Program or Activity.
- **Notice.** When an employee, student, or third party informs the Administrator of the alleged occurrence of sex discrimination, sex-based harassment, retaliation, or Other Prohibited Conduct.
- **Parties.** The Complainant(s) and Respondent(s), collectively.
- **Pregnancy or Related Conditions.** Pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.
- **Relevant Evidence.** Evidence that may aid a Decision-maker in determining whether the



alleged sex discrimination, sex-based harassment, retaliation, or Other Prohibited Conduct occurred, or in determining the credibility of the Parties or witnesses.

- **Remedies.** Typically, post-resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to the District's Education Program and Activity.
- **Respondent.** A person who is alleged to have engaged in conduct that could constitute sex discrimination, sex-based harassment, retaliation for engaging in a protected activity under Board Policy.
- **Student.** Any person who has gained admission. Parents, guardians, or other legal representatives authorized to make decisions on a minor Student's behalf are included anytime a Student party is mentioned in the Policy or Procedures.
- **Title IX Coordinator.** At least one official designated by the District to ensure ultimate oversight of compliance with Title IX and the District's Title IX program. References to the Coordinator throughout the Policy may also encompass a Deputy or designee of the Coordinator for specific tasks.

## **APPENDIX B: STATEMENT OF THE PARTIES' RIGHTS**

Under this Policy and procedures, the Parties have the right to:

- An equitable investigation and resolution of all credible allegations of prohibited sex discrimination, sex-based harassment, or retaliation when credibly reported to District officials.
- Timely notice of all alleged violations, including the identity of the Parties involved (if known), the specific misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated Policies and procedures, and possible sanctions.
- Timely notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations.
- Be informed in advance of any District public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- Have all personally identifiable information protected from the District's release to the public without consent, except to the extent permitted by law.
- Be treated with respect by District officials.
- Have District Policy and these procedures followed without material deviation.
- Voluntarily agree to resolve allegations under this Policy through Informal Resolution without District pressure, if Informal Resolution is offered or approved by the Title IX Coordinator or designee.
- Not be discouraged by District officials from reporting sex discrimination,

sex-based harassment or retaliation to both school and community authorities.

- Have the District respond promptly to alleged Policy violations.
- Be informed of available supportive measures, such as counseling, advocacy, health care, and/or other services, both in school and in the community.
- Be informed of available assistance in changing academic and/or employment situations after an alleged incident of sex discrimination, sex-based harassment, or retaliation if such changes are reasonably available. No formal report, or investigation, either institutional or criminal, needs to occur for this option to be available. Such actions may include, but are not limited to:
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - Transportation assistance
  - Rescheduling or adjusting an exam, paper, and/or assignment
  - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - Transferring class sections
  - Alternative course completion options
  - Alternative placement
- Have the District maintain supportive measures for as long as necessary, ensuring they remain confidential, provided confidentiality does not impair the District's ability to provide the supportive measures or comply with the law.
- Receive sufficiently advanced notice of any District meetings or interviews involving another party, when possible.
- Identify and have the Investigator(s) and/or Decision-maker question relevant available witnesses, including expert witnesses.
- Provide the Investigator(s) with a list of questions that, if deemed relevant and permissible by the Investigator(s), may be asked of any party or witness.
- Have Complainant's inadmissible sexual interests/prior sexual history or any party's irrelevant character evidence excluded by the Decision-maker.
- Access the relevant evidence obtained and respond to that evidence.
- A fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- Receive a summary of all relevant and permissible evidence obtained during the investigation, subject to privacy limitations imposed by federal and state law, and be given five (5) business days to review and comment on the evidence.
- The right to receive a copy of the summary of relevant evidence, including all factual, Policy, and/or credibility analyses performed.
- Be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- Regular status updates on the investigation and/or Grievance Process.
- Have reports of alleged Policy violations addressed by individuals assigned by the Title IX Coordinator or designee who have received relevant annual training as required by law.
- Preservation of confidentiality/privacy, to the extent possible and permitted by law.

- Meetings and interviews that are closed to the public.
- Petition that any District representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- Apply the appropriate standard of proof, preponderance of the evidence, to make a Finding and Final Determination after an objective evaluation of all relevant and permissible evidence.
- Be promptly informed of the Grievance Process finding(s) and sanction(s) (if any) and be given a detailed rationale of the decision (including an explanation of how credibility was assessed) in a written outcome letter delivered to the Parties simultaneously (without undue delay).
- Be informed in writing of when a District decision is considered final and any changes to the Final Determination or sanction(s) that occur post outcome letter delivery.
- Be informed of the opportunity to appeal the Grievance Process finding(s) and sanction(s), and the procedures for doing so in accordance with the District's grounds for appeal.
- A fundamentally fair resolution as defined in these procedures.