

Adopted: August 2020

Saint Paul Public Schools Procedure 102.00.01

Revised:

Procedure 102.00.01

Title IX Grievance Procedures

I. TITLE IX GRIEVANCE PROCEDURES

A. Adoption of Grievance Procedures

The Saint Paul Public School District's ("the District") Board of Education ("Board") policies [Policy 102.00, Equal Opportunity/Nondiscrimination](#) and [Policy 415.00, Harassment, Discrimination, Violence, and Retaliation](#) prohibit discrimination on the basis of sex and sexual harassment. [Policy 102.00](#) incorporates Title IX, a federal statute prohibiting recipients of federal financial assistance from engaging in discrimination on the basis of sex in education programs and activities.¹

In relevant part, [Policy 102.00](#) requires the District to comply with Title IX and its implementing regulations and authorizes the designation of specific individuals to carry out those obligations. Title IX and its implementing regulations require the District to adopt grievance procedures for resolving complaints alleging sex-based discrimination and sexual harassment. These grievance procedures are adopted under [Policy 102](#) and comply with Title IX.

These procedures are implemented uniformly and equitably with regard to Complainants and Respondents, are free from bias, conflict of interest, and where appropriate, are uniquely tailored and individualized to meet the needs of the involved parties.

B. Construction

These procedures are reviewed and updated as necessary in a manner consistent with District policy and in accordance and compliance with applicable laws and regulations. These procedures will be construed and interpreted in a manner which complies with the District's legal and regulatory obligations.

C. Assistance or Accommodation

Persons needing assistance or an accommodation to access or understand rights under these procedures should contact the Title IX Coordinator. (Section II, Title IX Coordinator and Administrative Contact Information).

D. Scope and Applicability

These procedures should be utilized any time a District Personnel has knowledge of sex-based discrimination, sexual harassment, or has notice that sexual harassment might have occurred. Acts of sex-based discrimination and sexual harassment may be committed by any person upon any other, regardless of the sex, sexual orientation, and/or gender identity of those involved.

¹ These and other Board of Education policies and procedures can be found at: spps.org/boardpolicies.

- Complaints or concerns alleging other sex-based discrimination should be reported according to procedures identified in [Policy 415.00](#) and will be investigated and adjudicated according to those procedures. A person investigating sex-based discrimination under [Policy 415.00](#) is encouraged to contact the Title IX Coordinator during the investigation and resolution.
- Complaints alleging sexual harassment will be addressed under Section V, Definitions through Section XVIII, Informal Resolution.

Persons engaging in conduct that does not fall within these procedures may be subject to investigation and/or sanction under other guidelines, policies, or procedures. Examples include, but are not limited to:

- [Policy 102.00](#) Equal Opportunity/Non Discrimination
- [Policy 415.00](#) Harassment, Discrimination, Violence, and Retaliation
- [Policy 501.00](#) Hazing (students only)
- [Policy 505.00](#) Bullying (students only)
- [Student Rights and Responsibilities](#)
- [Social Media Policies and Guidelines](#)
- Prior directives (staff only)

In the event a person reports conduct which allegedly occurred prior to the implementation of these procedures, the District will typically apply the policy in place at the time of the alleged incident and the procedures in place at the time the report is made.

E. Special Education

These procedures do not change or alter rights for students who have, or may have, a Special Education designation. If either party is or may have a Special Education designation, the appropriate Special Education Supervisor will be consulted to ensure the protection of those rights. For complaints alleging sexual harassment, the Special Education Supervisor will be consulted even where no formal complaint has been filed, for example: Emergency Removals (Section X, Emergency Removals), and supportive measures (Section VIII, Supportive Measures).

F. Parents/Legal Guardians

Parents/legal guardians may act on behalf of minor children during a Title IX grievance proceeding to the extent permitted by law. In accordance with the law, the District will take reasonable steps to ensure parents/legal guardians are aware of and involved in Title IX proceedings relating to their child.

G. Confidentiality

The school district will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be

permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, or FERPA's regulations, and State law under Minn. Stat. § 13.32 34 C.F.R. Part 99, or as required by law, or to carry out the purposes of 34 C.F.R. Part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder (i.e., the school district's obligation to maintain confidentiality shall not impair or otherwise affect the Complainant's and Respondent's receipt of the information to which they are entitled with respect to the investigative record and finding of responsibility).

II. TITLE IX COORDINATOR AND ADMINISTRATIVE CONTACT INFORMATION

A. Title IX Coordinator

The Title IX Coordinator acts with independence and authority free from conflicts of interest and/or bias. The Title IX Coordinator's role is varied but includes: overseeing District compliance with Title IX and any implementing regulations, District policies and procedures prohibiting sex discrimination, serving as a primary point of contact for sexual harassment complaints, and coordinating supportive measures to stop, remediate, and prevent sexual harassment prohibited by the Title IX. The Title IX Coordinator may also conduct or support investigations.

B. Compliance Concerns

Concerns about compliance with the Title IX Procedures or a potential conflict of interest or bias by any Title IX Team member should be directed to the Title IX Coordinator:

Dana Abrams
360 Colborne Street, St Paul MN 55102
Dana.Abrams@spps.org, or TitleIX@spps.org
651-767-8394 (office)
651-226-3372 (cell)
<https://www.spps.org/Page/39808>

C. Administrative Contact Information:

Inquiries, complaints, and reports can also be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

III. CLASSIFICATION OF DATA

Data collected by the District during a Title IX Grievance Procedure is subject to the Minnesota Government Data Practices Act, the Family Educational Rights and Privacy Act, and Title IX and will only be released or disclosed as permitted by law.

IV. SEXUAL HARASSMENT GRIEVANCE PROCEDURES

The following sections (Section V, Definitions through Section XVIII, Informal Resolution) shall apply to sexual harassment complaints.

V. DEFINITIONS

For the purposes of the Sexual Harassment Grievance Procedures, the following definitions

Advisor: A person chosen by Complainant or Respondent to accompany the party to meetings, interviews, and provide advice and support during a Sexual Harassment Grievance Procedure.

Complainant: A person who is alleged to be the victim of conduct that might constitute sexual harassment within the meaning of these procedures.

Complaint (Formal): A document signed by Complainant (or parent/legal guardian) or the Title IX Coordinator alleging sexual harassment and requesting an investigation.

Day: Shall have the same definition stated in [Policy 415.00](#).

Dating Violence: Violence, on the basis of sex, committed by a person who is or who has been in a social relationship of a romantic or intimate nature with the Complainant. In determining whether a romantic or intimate relationship exists the following may be considered:

- a) Complainant's statement considering the length and type of the relationship, frequency of interaction between the persons involved in the relationship
- b) For the purposes of this definition:
 - i. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - ii. Dating violence does not include acts covered under the definition of Domestic Violence.

District Personnel: Shall have the same definition stated in the [Policy 415.00](#). For the purposes of this procedure, District Personnel shall also include potential District Personnel as well as Responsible Administrators.

Domestic Violence: Violence, on the basis of sex:

- a) Committed by a current or former spouse or intimate partner of Complainant;
- b) By a person with whom Complainant shares a child in common; or
- c) By a person who is cohabitating with, or has cohabitated with, Complainant as a spouse or intimate partner; or

- d) By a person similarly situated to the spouse of the Complainant under the laws of Minnesota; or
- e) by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Minnesota.

Education Program or Activity: locations, events, or circumstances where the District exercises substantial control over Respondent and context in which the alleged sexual harassment occurs.

Finding of Responsibility: A written determination, using the preponderance of the evidence standard, made by the Title IX Decision-Maker as to whether the Respondent committed a Title IX violation. The finding of responsibility will also include any sanctions/discipline or remedies.

Mandatory Reporter: Any District Personnel. Mandatory Reporters are obligated to share all knowledge, notice, and/or complaints of sexual harassment or that might constitute sexual harassment with a Responsible Administrator and the Title IX Coordinator. This applies to complaints involving students or District Personnel.

Notice: a Mandatory Reporter, student, parent/guardian, Responsible Administrator, or other District Personnel informs the Title IX Coordinator or other Responsible Administrator of sexual harassment or allegation of sexual harassment.

Party/Parties: Complainant(s) and Respondent(s), singly, or collectively.

Quid Pro Quo: A District Personnel conditioning (explicitly or implicitly) the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct.

Remedies: issued to Complainant after Respondent has been found responsible. Remedies may address safety, prevent recurrence of the conduct, and restore access to the District's educational program or activity. Remedies may burden the Respondent.

Respondent: A person alleged to have engaged in conduct that might constitute sexual harassment within the meaning of these procedures.

Responsible Administrator: Shall have the definition as stated under [Policy 415.00](#).

Sanction: Consequence or discipline imposed against Respondent after an investigation determines that Respondent was responsible.

Sexual Assault: Sexual Assault means:

- a) Forcible Sex Offenses: Any sexual act directed against another person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent; or

- b) Forcible Rape: Penetration, no matter how slight, 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 Complainant; or
- c) Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or
 - i) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity; or
- d) Sexual Assault With an Object: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or
 - i) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity; or
- e) Forcible Fondling: The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or
 - i) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity; or
- f) Non-Forcible Sex Offenses:
 - i) Incest: Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Minnesota law; or
 - ii) Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of consent.

Sexual Harassment: Umbrella category of offenses and prohibited activity, including: Quid Pro Quo (perpetrated by District Personnel), Sexual harassment, Stalking, Dating Violence, Sexual Assault, and Domestic Violence. Sexual harassment also includes:

- a) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity.

Stalking: engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress. For the purposes of this definition:

- a) 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.
- b) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

- c) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Student: Shall have the same meaning as conveyed through the Student Rights and Responsibilities Handbook. Student means an admitted student, but also means a student or potential student who is participating in the District educational program or activity, including, but not limited to: athletics, events, programs, camps, and community education classes.

Supportive Measures: Reasonable, non-disciplinary, non-punitive individualized services offered to Complainant or Respondent to restore or preserve access to the District's education, program or activity. Supportive measures may not unreasonably burden the other party.

*Title IX Appeals Officer: A person(s) who receives and evaluates appeals after the Title IX Decision-Maker issues a finding of responsibility. The Title IX Appeals Officer issues a written outcome on the appeal.

*Title IX Coordinator: A person(s) designated to oversee and ensure compliance with the District's Title IX program, which includes policies prohibiting sex-based discrimination and the Title IX Grievance Procedures.

*Title IX Decision-Maker: A person(s) with decision-making authority as to whether Respondent was responsible or not responsible for a Title IX violation.

*Title IX Investigator: A person(s) who investigates Title IX matters, especially formal complaints alleging a Title IX violation. The Title IX Investigator will assess relevance and credibility, synthesize evidence, and prepare reports with relevant information.

Title IX Team: Collectively referring to all Title IX role(s) identified by ().

VI. BURDEN OF PROOF AND STANDARD OF EVIDENCE

A. Burden of Proof

The burden of proof remains on the District to prove or disprove an alleged Title IX violation. This burden shall not be transferred to either party.

B. Standard of Evidence

The standard of evidence will be "preponderance of the evidence" standard. This standard means it is "more likely than not" that the conduct occurred.

C. Presumption of Non-Responsibility

A Respondent is presumed not responsible for a Title IX violation unless and until a Respondent has been found responsible by the preponderance of the evidence standard. No disciplinary action may be taken against a Respondent before a finding of responsibility.

VII. REPORTS AND REPORTING OBLIGATIONS

A. Reports Required

All members of the District community are encouraged to actively work towards fostering a culture that is free from unlawful discrimination, harassment, violence, and retaliation. This includes active vigilance about preventing, identifying, stopping, and reporting all potential violations of this and other policies.

Without exception, District Personnel are Mandatory Reporters under these procedures (Section V, Definitions).² The District must respond whenever a Mandatory Reporter has knowledge of sexual harassment or possible sexual harassment involving students or District Personnel. A Mandatory Reporter who is a target of sexual harassment is not required to report their own experience, however they are encouraged to do so.

Mandatory Reporters, regardless of role, with knowledge of sexual harassment or possible sexual harassment, must report to the Responsible Administrator and the Title IX Coordinator immediately, but in no less than one (1) day of receipt. Upon receipt, the complaint will be documented on the 415.00 form (as needed) and sent to the Assistant Superintendent.

If the Responsible Administrator is the person with knowledge or suspected knowledge, the Responsible Administrator should complete the 415 form (as needed) and send it to the Title IX Coordinator and the Assistant Superintendent.³

If the Responsible Administrator is the subject of a complaint, the complaint can be made directly to the Title IX Coordinator, another Responsible Administrator, or the Superintendent. If the complaint is against the Superintendent, the complaint can be made to the Board of Education.

B. Contents of Reports

Reports must contain as much information as is known to the Mandatory Reporter and must be made in good faith. Failure to make reports as required by these procedures may result in disciplinary action. Submission of a good faith report will not affect the reporter or complainant's work or educational environment, such as grades or future employment.

C. Method of Reporting

Any person can make a complaint, including parents, students, District Personnel, volunteers, and contractors. Persons who wish to make a complaint may (but do not have to) make the complaint directly to the Title IX Coordinator. Complaints can also be made to Title IX Team

² Status as a "Mandatory Reporter" does not change or alter any other mandatory reporting obligations, such as the duty to report suspected child maltreatment.

³ If the complaint also alleges another protected class complaint (i.e. race, disability) or retaliation in addition to sexual harassment, the protected class complaint should also be forwarded to the EEO Director as required by [Policy 415.00](#). Complaints involving student Respondents will be investigated by the Responsible Administrator. Complaints involving staff Respondents will be investigated by the EEO Director and/or HR.

members, Responsible Administrators, and other District Personnel, including the Superintendent.

Complaints will be accepted regardless of the manner of receipt and will be provided to the Title IX Coordinator. The following are examples of the way complaints can be made:

- in writing, or using the paper version of the 415.00 form;
- electronically, via email or the electronic 415.00 form;
- orally, via an in person conversation, voicemail, video call, or phone call.

Complaints can be made 24 hours a day, 7 days a week, through voicemail, the electronic 415 form or via email. Anonymous complaints are also accepted.

D. Action Taken Upon Receipt

Upon receipt of a complaint, the Title IX Coordinator will promptly contact the Complainant and offer supportive measures (Section VIII, Supportive Measures), gather additional information, provide information about the Sexual Harassment Grievance Procedures, how to file a formal complaint and the investigative process, answer questions, etc.

Complainants wishing to make a formal complaint of sexual harassment (a signed document requesting an investigation) should refer to Section XI, Formal Complaints.

VIII. SUPPORTIVE MEASURES

A. General Principles

Supportive measures are reasonable, individualized services offered equitably and without charge to the Complainant and Respondent to the extent possible to restore or preserve access to the District's education programs and activities, and to ensure the overall safety of the parties and other individuals and deter retaliation.

The Title IX Coordinator is responsible for implementing Supportive measures, and will work with parents/legal guardians as applicable to provide them. Supportive measures will remain as confidential as reasonably possible.

If either Complainant or Respondent is or may have a Special Education designation, the Title IX Coordinator will ensure the appropriate Special Education Supervisor is consulted regarding the provision of supportive measures.

B. Offered Promptly to Complainant

The Title IX Coordinator will promptly offer and discuss supportive measures with the Complainant, considering the Complainant's wishes. This conversation may involve the Responsible Administrator. A Complainant can receive supportive measures even if a formal complaint is not filed.

C. Examples of Supportive Measures

Examples of supportive measures may include, but are not limited to, the following:

- Referral to a District student-based resource (i.e. counseling or social work services)
- Referral for academic or workplace accommodations
- Altering daily class schedules (i.e. classroom, recess, lunch, assigned seating)
- Altering work arrangements or assignments for employees
- Providing safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines
- Withdrawals, transfers, or leaves of absence
- Any other actions deemed appropriate by the Title IX Coordinator

IX. ADVISORS

A. General Principles

Parties have the right, at their own expense, to an Advisor of their choice throughout a Title IX proceeding. An Advisor may, but does not have to be, an attorney or a parent/legal guardian. The Advisor may also be a union representative.

District Personnel may, but are not required to, serve as an Advisor for either party. Persons who serve as Advisors, including District Personnel, do so on a volunteer basis, on their own time, at their own expense.

Status as an Advisor will not shield the Advisor from potentially being called as a witness. Should an Advisor be called as a witness, the Advisor may be subject to additional questioning or interviews, depending on the circumstances.

B. Role of the Advisor

The Advisor will support or assist the party during a Title IX proceeding. For example, an Advisor may help the party understand the process, prepare materials, questions or written responses and attend interviews. (Section XIII, Investigation Procedure). While an Advisor may help the parties prepare for an interview, parties are generally expected to answer for themselves.

Advisors are expected to maintain the privacy of any information records shared with them relating to the Title IX matter.

C. Limitations of Advisors (Generally)

- Advisors are subject to the anti-retaliation provisions in this procedure.
- Advisors should refrain from communicating (or attempting to communicate) with the other party and/or the other party's Advisor.
- Advisors should refrain from having, or attempting to have, unsolicited *ex parte* or unilateral conversations with a Title IX team member.
- Advisors may or may not be a confidential resource to a party. A party who admits to a Title IX violation or other violation may not be shielded from that admission.

- Advisors are subject to any prohibitions or restrictions on distribution or dissemination of information relating to a matter under the Sexual Harassment Grievance Procedures.
- An Advisor cannot be a person who is the subject of the same Title IX matter.

The District may further limit the role of the Advisor equally for both parties as warranted by the circumstance and in a manner consistent with applicable laws.

D. Written Confirmation Required

Written documentation confirming an Advisor relationship is required before the Advisor receives any communications or materials associated with a matter under the Sexual Harassment Grievance Procedures.

District employees who may be entitled to union representation and wish to have someone else other than the union representative serve as their Advisor may be waiving their rights to union representation and should consult with their union on any implications of that decision. In such instances, additional documentation from the parties, Advisor, and/or union may be required.

Once written confirmation of the Advisor-advisee relationship is received, Advisors will generally receive the same information as the party they advise. However, parties should promptly inform the Title IX Coordinator of any information which they do not want to be shared with the Advisor.

A party wishing to dissolve the Advisor relationship should promptly inform the Title IX Coordinator in writing (electronic correspondence is sufficient).

X. **EMERGENCY REMOVAL**

A. General Principles

If a student Respondent poses a threat to another person's physical health or physical safety and the circumstances are arising out of the Sexual Harassment allegations, the student Respondent may be removed from a District education program or activity (i.e. athletic event, academic instruction, practice, camp, etc.). In these situations, the removal is not disciplinary.

This section does not impact or limit the District from imposing corrective or disciplinary actions relating to behavior that is prohibited by other misconduct policies or codes of conduct.

A Formal Complaint is not required before a student Respondent is removed under this section. Emergency Removal may also be utilized before an investigation concludes.

B. Procedures

After removal, the student Respondent must be provided with notice of the removal and be provided with an immediate opportunity to challenge it. The purpose of this process is only to determine if removal was proper.

Sufficient evidence that a student Respondent poses an immediate threat to a person’s physical safety or physical health based on an individualized risk and safety analysis must exist. The threat need not be directed exclusively at Complainant.

If a student Respondent is removed from academic instruction under this section for more than one (1) school day, applicability of procedures identified in [Policy 506.02 Student Discipline: Exclusion or Expulsion](#) and [Policy 506.03 Student Discipline: Suspension](#) should be considered. These policies should also be considered for student Respondents who have been identified as recipients of Special Education, who are removed from academic instruction under this section for one (1) day or less, and who will not be receiving instruction during the period they are removed. Compliance with those provisions will satisfy this Section.

In all other instances (including removal from an athletic event), a student Respondent and their parent/legal guardian will receive notice of the removal and have an opportunity to challenge the removal from the Title IX Coordinator. The individual ordering the removal will provide the student Respondent with the Title IX Coordinator’s contact information. The student Respondent will be notified regarding the decision as to whether the removal was justified.

If the Title IX Coordinator is unavailable, the student Respondent should receive notice of the removal and opportunity to challenge from an Assistant Superintendent.

C. Administrative Leave

These procedures do not prohibit the District from placing staff on administrative leave, in a manner consistent with collective bargaining agreements and District policies and practices.

XI. FORMAL COMPLAINTS

A. Requirements

The District will investigate all formal complaints of sexual harassment (Section V, Definitions). A formal complaint is a document signed by the Complainant (or a parent/legal guardian) or the Title IX Coordinator specifically requesting an investigation. If a Complainant does not want to file a formal complaint, supportive measures are still available. (Section VIII, Supportive Measures). Formal complaints can only be filed by Complainants who are participating in or attempting to participate in a District education program or activity.⁴

B. Investigation by Title IX Coordinator

If a Complainant does not wish to file a formal complainant, Title IX Coordinator may, at their discretion, file a formal complaint without Complainant, as long as it is not clearly unreasonable to do so, and in compliance with applicable law. In this case, the reported victim is Complainant, who still has rights under these procedures, including the right to supportive

⁴ The district may, in its discretion, consolidate formal complaints where the allegations of sexual harassment arise out of the same facts or circumstances.

measures, to an Advisor (Section IX, Advisors), and to inspect and review evidence (Section XIII, Investigation Procedures).

The IX Coordinator may consider the following when deciding to file a formal complaint:

- the nature and severity of the conduct alleged;
- risk to health and/or safety of the Complainant or District community;
- the risk the conduct may be repeated;
- the availability of evidence;
- the actual and potential impact of the conduct; and
- whether the respondent is an employee, student or third party.

C. Statute of Limitations

There is no time limit for filing a formal complaint. However, if the Respondent is no longer under the District's control (i.e. Respondent has left employment or is no longer a student), or significant time has passed, there might be insufficient information to reach an accurate finding of responsibility. In such cases, at the discretion of the Title IX Coordinator, the formal complaint may be dismissed or may not be filed. (Section XII, Dismissals). Complainants will be entitled to supportive measures.

XII. DISMISSALS

A. Jurisdiction

These procedures only apply to allegations occurring within the United States (U.S.), within District education programs and activities,⁵ and which constitute "sexual harassment." "Sexual harassment" (Section V, Definitions) encompasses the following:

- The alleged act(s) must be sufficiently severe, pervasive, and objectively offensive; or
- The alleged act(s) constitutes "Quid Pro Quo" (perpetrated by a Respondent who is a District Personnel; or
- The alleged act(s) constitute "Stalking"; or
- The alleged act(s) constitute "Domestic Violence"; or
- The alleged act(s) constitute "Dating Violence"; or
- The alleged act(s) constitute "Sexual Assault."

B. Mandatory Dismissals

Conduct which fails to meet the above requirements must be dismissed. A dismissal must also occur if, at the time a formal complaint is filed, the Complainant was not participating in or attempting to participate in a District education program or activity.

C. Permissive Dismissal

A formal complaint may be dismissed, for instance, where a Complainant asks the Title IX Coordinator in writing to dismiss a formal complaint, where Respondent is not/no longer

⁵ Whether the alleged conduct took place within a District education program or activity is a fact-specific inquiry.

employed by or under the control of, the District, or where circumstances prohibit the District from gathering sufficient information so as to make a finding of responsibility.⁶

Should the Respondent not be a member of the District community, or is a student or District Personnel who has left the District's jurisdiction, nothing prevents the District from continuing to address or remedy systemic issues or variables that contributed to the situation, including the provision of supportive measures to Complainant.

D. Notice and Right to Appeal

Complainants will receive written notice of a dismissal occurring under this section along with information on any rights to appeal. (Section XV, Appeals).

In the event a sexual harassment complaint does not meet the jurisdictional requirements or a sexual harassment complaint is dismissed, the Title IX Coordinator may refer the complaint for evaluation under other applicable District policies and procedures.

XIII. INVESTIGATION PROCEDURES

A. Notice of Allegations

After receiving a formal complaint, the parties⁷ will be provided with written notice of the allegations and investigation commencement. The notice will contain the following:

- information about the applicable procedures for resolution;
- a statement that Respondent is presumed not responsible and a determination on responsibility will be made at the conclusion of the investigation;
- identity of the parties (if known);
- a statement of the potential discipline or sanctions which could occur as a result;
- a meaningful summary of the allegations, specific misconduct alleged, the date and location of the alleged incident (if known);
- specific policy or procedure allegedly violated;
- each party's right to have an Advisor of their choice;
- each party's right to inspect and review evidence at the conclusion of an investigation;
- the District's anti-retaliation policy;
- information on how to make accommodation requests;
- any prohibitions on making false statements.

The Notice will be provided to both parties and parents/legal guardians (if applicable) via email. Notice may also be provided in person, as necessary. If the scope of the investigation expands or the formal complaint is amended, supplemental notice will be issued to both parties and parents/legal guardians.

B. Investigation Procedures

⁶ Example: passage of time between the formal complaint and alleged act(s).

⁷ When possible, the Complainant will be informed as to when the Notice will be delivered to Respondent.

The District will fairly and neutrally investigate all formal complaints of sexual harassment. The Title IX Coordinator may take additional steps as necessary to ensure investigations are conducted in this manner. Information regarding possible misconduct occurring outside the Sexual Harassment Grievance Procedures will be provided to the appropriate person(s) or department(s) responsible for investigating that conduct.

Investigations will vary depending on the allegations but may include:

- interviews with Complainant, Respondent, and witnesses;
- review of discipline records, directives, coaching, and performance reviews;
- review of electronic data on a District-issued device or attached to a District-issued email address (i.e. mobile phone, computer, iPad);
- review of security camera footage (i.e. building, bus).

Complainant and Respondent will be provided with equal opportunities to present facts, witnesses (fact and expert), prepare, collect, as well as respond to and provide evidence (inculpatory and exculpatory). Subject to prohibitions on retaliation, the District will not restrict the ability of either party to discuss the allegations under investigation, to obtain witnesses, or to gather and present evidence.

C. Privileged or Protected Documents/Information Excluded

The District will not use or rely on documents/information that is protected by a legally recognized privilege unless the owner has expressly waived that privilege. The District will also not use a medical, psychological, treatment record, or other similarly protected document, even if the District already has the documents in its possession, without the express written consent of the party to whom the document/information belongs.

D. Timeliness of Grievance Procedures (Generally)

Investigations may take approximately 30-45 days to complete. The entire grievance process, through appeals, may take between 90-120 days, absent extenuating circumstances or good cause. Parties will be notified of any delays. To ensure a timely resolution, parties should be prepared to adhere to timelines in these procedures. Extensions will be reviewed and granted by the Title IX Coordinator on a case-by-case basis.

E. Investigative Interviews and Meetings

Parties and witnesses will be provided with ample notice prior to a meeting or interview to which they will take part. Parties are entitled to have their Advisor present as well as a parent or legal guardian if applicable. (Section IX, Advisors). Recording devices will not be allowed.

Investigative interviews will take place in accordance with federal and state law, collective bargaining agreements, the Sexual Harassment Grievance Procedures, and District practices. Interviews may take place over the phone, in person, or video conference, as required.

F. Inspect and Review Evidence: 10 Day Review Period

At the conclusion of the investigation, the Title IX Investigator will prepare a preliminary investigative report and notify Complainant and Respondent the investigation has concluded.

Consistent with applicable law, District policy, and the Sexual Harassment Grievance Procedures, the Title IX Investigator will provide Complainant and Respondent with access to the preliminary report and evidence related to the investigation. Complainant and Respondent will have a period of ten (10) days to inspect and review the information. After this period, parties may submit written responses to the report and evidence to the Title IX Coordinator. These responses will not be shared with the other party.

G. Final Investigative Report and Written Questions: 10 Day Review Period

The Title IX Investigator will review written submissions from both parties and prepare a final investigative report. The report will consider the parties' responses and include the following:

- a fair and accurate summary of the facts;
- relevant evidence;
- assessments of credibility of parties and witnesses.

The Title IX Investigator should also document any rationale(s) as to differences between the final report and preliminary report. The Title IX Investigator will provide access to the final report simultaneously to both parties and Advisors.

parties will have another ten (10) days to review the final investigative report and, if they chose, submit an additional written response to the Title IX Decision-Maker responding to the final investigative report. Written statements will not be shared with the other party.

During this period, parties may also prepare written questions for the other party or the other party's witnesses. Questions should be provided to the Title IX Decision-Maker who will pose questions on behalf of the submitting party. (Section XIV, Finding of Responsibility). A party or witness will not be forced to answer a question.

H. Access to Evidence and Notice of Allegations: Notice to Parties and Advisors

The Notice of Allegations, access to evidence and investigative reports are provided in a manner consistent with District policy, procedures and applicable law. Parties are specifically instructed not to reproduce (copy or replicate in any way) or disseminate (distribute or share through any means) any evidence, information, documents (etc.) related to a Title IX proceeding.

Parties and witnesses are expected to participate in good faith and as truthfully as possible during the investigation. Knowingly providing false evidence, tampering with or destroying

evidence, or deliberately misleading an investigation may subject the person to investigation and/or discipline.

Either party's failure to adhere to these instructions will be taken seriously and may constitute a violation of the anti-retaliation provisions in this procedure or other District policies and procedures. (Section XVI, Retaliation Prohibited).

I. Classification of Data

Investigative reports and evidence under this section are classified as Nonpublic under the Minnesota Government Data Practices Act. (Section III, Classification of Data).

XIV. FINDING OF RESPONSIBILITY

A. Question and Answer Period

The Title IX Decision-Maker will be a different person than the Title IX Coordinator and the Investigator, and will not have had any previous involvement in the investigation. The Title IX Investigator will provide the Title IX Decision-Maker with the final investigative report, and a list of names of all parties, witnesses, and Advisors (if any).

The Title IX Decision-Maker will receive and review written questions from parties for relevancy, and pose relevant questions to the parties or witnesses. Irrelevant questions will be excluded. A party whose question is excluded will be provided with a rationale as to why and may be given an opportunity to reframe the question. Relevancy objections relating to an omitted question will not be permitted.

The Title IX Decision-Maker may also pose questions to parties and witnesses. At the conclusion of this period, the Title IX Decision-Maker will compile the relevant questions and answers and identify the party to whom a question was directed and will provide parties with access to this information. A person will not be forced to answer a question or participate in this process.

B. Determination

The Title IX Decision-Maker will review relevant materials, written statements from the parties, and questions/answers to make a determination as to whether the Respondent committed a Title IX violation using the preponderance of the evidence standard. (Section VI, Burden of Proof and Standard of Evidence).

If the Respondent is found responsible, the Title IX Decision-Maker will consult with appropriate persons or departments to identify sanctions and/or remedies. The Title IX Decision-Maker may inform the Title IX Coordinator of the outcome before the written determination is prepared.

The Title IX Decision-Maker will prepare a written determination, which will be delivered to the parties and their Advisors simultaneously. The determination will contain the following:

- the specific policy reported to have been violated;

- a description of the allegations at issue;
- procedural steps taken throughout the investigation;
- a conclusion on responsibility as to the alleged policy violation;
- findings of fact supporting the conclusion;
- conclusions about which allegations did or did not occur;
- statement of, and rationale for, the conclusion regarding each allegation;
- sanctions (if applicable);
- a statement of whether remedies will be provided to Complainant⁸ (if applicable);
- appeal rights and how to exercise them; and
- when the determination will become final.⁹

C. Sanctions

Sanctions can only be issued after the Respondent has been found responsible. Sanctions may range from educational, restorative, rehabilitative, or disciplinary depending on and proportionate to the level of severity of the allegations for which the Respondent was found responsible.

The following factors may be considered in determining sanctions:

- the severity, persistence, or pervasiveness of the prohibited conduct;
- the nature of the prohibited conduct;
- whether the prohibited conduct included acts of violence;
- any incidents of prior misconduct by the Respondent, including disciplinary history;
- the impact of the prohibited conduct on other members of the District community;
- an assessment of the Respondent's potential for development, including whether the Respondent has accepted responsibility for the prohibited conduct;
- the maintenance of a safe, nondiscriminatory, and respectful work and learning environment; and
- any other mitigating, aggravating, or compelling factors.

Examples of sanctions for students or staff may include, but are not limited to:

- written reprimand, oral warning, workplace suspension, probation extension, etc. (consistent with progressive discipline);
- termination;
- required training or education;
- exclusion from extra-curricular activities or events;
- suspension;
- expulsion;

⁸ Remedies will typically not be shared with Respondent unless the remedy directly relates to the Respondent.

⁹ The determination becomes final when an appeal is no longer timely and neither party has appealed; or the parties are notified of the outcome of the appeal (whichever comes first).

- performance improvement plan.

XV. APPEALS

A. Right to Appeal and Grounds

Appeals are granted only pursuant to the grounds identified in this section. An appeal must be submitted in writing to the Title IX Appeals Officer within five (5) days of receipt of the determination or will not be considered timely. In that case, the finding of responsibility will become final. Extensions may be granted by the Title IX Coordinator on a case-by-case basis.

The Title IX Appeals Officer has not been involved with the matter previously and is not the same person as the Title IX Coordinator, Title IX Investigator, or Title IX Decision-Maker.

A person may appeal on any one (or more) of the following grounds:

- mandatory dismissal was in error;
- a permissive dismissal;
- procedural irregularity that affected the outcome;
- new evidence not reasonably available at the time of determination of responsibility or dismissal that could affect the outcome;¹⁰
- the Title IX Coordinator, Title IX Investigator, or Title IX Decision-Maker had a conflict of interest that affected the outcome.

If the appeal is timely, both parties will be notified of the appeal which will be reviewed against one the above grounds. Sanctions or remedies identified in the determination will be stayed.

B. Appellate Process and Outcome

The Title IX Appeals Officer will issue a written decision as to the outcome of the appeal and provide it to parties and Advisors simultaneously. The outcome must include:

- finding on each ground for appeal;
- rationale as to the finding; and
- remand instructions (if any, for successful appeals).

If the Title IX Appeals Officer denies an appeal based on any of the above grounds, the Title IX Coordinator will work with appropriate person(s) and/or Department(s) to carry out sanctions and remedies as stated in the determination.

If the Title IX Appeals Officer grants an appeal on any of the above grounds, the Title IX Appeals Officer will circulate the original appeal request with the approved grounds for appeal to the parties and other appropriate persons. Remand instructions on how to cure the issue giving rise to the appeal may also be included. Person(s) will be asked to respond to the portion of the

¹⁰ In these instances, the appeal is typically remanded to the Title IX Investigator or Title IX Decision-Maker.

appeal that was approved and pertains to them. All responses will be directed to the Title IX Appeals Officer and circulated to the parties and Advisors for review and comment.

If a non-appealing party raises an appeal at this time, that appeal will be reviewed and addressed in the same manner as the original appeal.

The Title IX Appeals Officer will conduct a final review of responses, comments, and evidence (if any) and issue the outcome simultaneously to both parties and Advisors. No further appeals are permitted. However, supportive measures may also be adjusted for the parties as necessary.

C. Other Rights Not Affected

Parties may have additional rights to appeal discipline or sanctions, for example, under a collective bargaining agreement or other District policy or procedure.

XVI. RETALIATION PROHIBITED

A. Retaliation

Retaliation is prohibited against a person who, for example, makes a report or complaint, exercises their rights under Title IX or these procedures, supports a party, acts in good faith to oppose conduct that might constitute a violation of Board policies prohibiting discrimination on the basis of sex or these procedures, participates or who refuses to participate in a Title IX grievance proceeding.

Retaliation may include intimidation, threats, coercion, or discrimination against a person with the purpose of interfering with a right granted under a Title IX. Retaliation may also include sharing, reproducing, or disseminating another party's evidence during the evidentiary inspection and review period (Section XIII, Investigation Procedures). Retaliation also constitutes conduct, including materially adverse actions, pursuant to [Policy 415.00](#).

B. Reporting and Investigation

Retaliation complaints should be made via the procedures in Section VII, Reporting Obligations, or through the procedures identified in [Policy 415.00](#). Retaliation concerns should be reported immediately to the Title IX Coordinator and the Responsible Administrator. Complaints can also be made to the Equal Employment Opportunity Director or other person(s) identified in [Policy 415.00](#). Retaliation complaints will be investigated under [Policy 415.00](#).

XVII. RECORDKEEPING

A. Requirements

The District will maintain, for a period of at least seven (7) years, the following records:

- each sexual harassment investigation and a finding of responsibility (includes any sanctions imposed on Respondent and any remedies provided to Complainant);
- appeal and the result;
- informal resolution and the result;
- materials used to train Title IX Coordinators, Title IX Investigators, Title IX Decision-Makers, Title IX Appeals Officers, and any person supporting an informal resolution; and
- responses, including supportive measures, to complaints and formal complaints.¹¹

Training under this section will be publicly available for inspection on the District’s website. The District will also maintain any and all records in accordance with applicable laws.

XVIII. USE OF INFORMAL RESOLUTION

A. Generally

Restorative Justice or other informal resolution mechanisms are not specifically established under these procedures. Any use of Restorative Justice as an informal resolution mechanism in matters involving sexual harassment complaints requires the input of the Title IX Coordinator before proceeding.

If the Title IX Sexual Harassment Grievance Procedures apply, informal resolution mechanisms cannot be used in lieu of the complaint and investigation process identified in these procedures. Restorative Justice or informal resolution mechanisms may not be appropriate in all situations, and cannot be used, for example, where a District Personnel may have perpetrated sexual harassment against a student; where voluntary, written consent has not been obtained, or before a formal complaint has been filed.

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¹¹ This includes sufficient documentation as to why the District’s response in each case was not deliberately indifferent, steps taken to preserve access to District education programs and/or activities, and if no supportive measures were provided to Complainant, the reasons why that response was not clearly unreasonable in light of known circumstances).