

# DISTRICT RESPONSE TO ALLEGED SEXUAL HARASSMENT UNDER TITLE IX

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This rule has been established to facilitate the District's compliance with requirements of the federal regulations issued under Title IX of the Education Amendments of 1972 ("Title IX"). Specifically, this rule establishes expectations and procedures for the prompt and equitable resolution of reports and complaints that allege unlawful sexual harassment, as defined by the Title IX regulations, within the District's education program and activities. The existence of this rule, as a reflection of federal regulatory mandates, is not intended to suggest that sexual harassment is any more or any less serious, or any more or any less of a concern to the District, than harassment that is based on any other legally-protected status (e.g., race, national origin, disability, religion, etc.).

All District officials, District employees, and other persons acting as agents of the District must keep confidential the identity of (1) any individual who has made a report or complaint of sex discrimination that would be prohibited by Title IX, including any individual who has made a report or filed a formal complaint alleging Title IX sexual harassment; (2) any complainant (i.e., any individual who is alleged to be the victim of conduct that could constitute Title IX sexual harassment); (3) any individual who has been reported to be the perpetrator of conduct that could constitute sex discrimination under Title IX; (4) any respondent (i.e., any individual who has been reported to be the perpetrator of conduct that could constitute Title IX sexual harassment); and (5) any witness, except as may be required by law, permitted by the Family Educational Rights and Privacy Act and its implementing regulations, or reasonably necessary to carry out the purposes of the federal Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising under the federal Title IX regulations.

## **Responding to reports or other notice to the District of Title IX sexual harassment when no formal complaint has been filed**

The following procedures apply any time that a District Title IX Coordinator determines that the District has notice of Title IX sexual harassment or allegations of Title IX sexual harassment, but no formal complaint of Title IX sexual harassment has been filed by a complainant or signed by a Title IX Coordinator:

1. A District Title IX Coordinator must promptly contact the complainant (i.e., the individual who is alleged to be the victim of conduct that could constitute sexual harassment) regarding supportive measures (see below) and regarding the process for filing a formal complaint.
2. In consultation with other District officials as needed, a Title IX Coordinator will coordinate the identification, offering, and implementation of appropriate supportive measures for the complainant (see below).
3. A Title IX Coordinator or any administrator with knowledge of the relevant circumstances relating to the allegations of sexual harassment may, at any time, contact the District Administrator or his/her administrative-level designee for the purpose of evaluating whether the District will initiate the removal of the respondent from the District's education program or activity on an emergency basis, under the limited circumstances, procedures, and standards identified in the federal Title IX regulations. Procedures and standards established under other laws or District policies may also need to be satisfied in connection with any such emergency removal.
4. If an eligible complainant elects to file a formal complaint of Title IX sexual harassment at any point, the formal complaint shall be processed as provided, below, within this rule.
5. If a complainant is not eligible to file a formal complaint of sexual harassment under Title IX, or chooses not to do so, a Title IX Coordinator is authorized to sign a formal complaint regarding the alleged conduct. The following apply to the discretionary decision to sign a formal complaint on behalf of the District:

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- a. The Title IX Coordinator may not delegate the determination in full to another agent or employee of the District. However, prior to making the determination, the Title IX Coordinator may consult, as needed, with appropriate persons, such as another District Title IX Coordinator (if designated), the District Administrator, or District legal counsel.
  - b. The primary reasons that a Title IX Coordinator would sign a Title IX complaint and initiate an investigation would be a determination, on behalf of the District, that the District's interests in safety and/or in potential sanctions for any respondent(s) make an investigation and determination of responsibility pursuant to a formal complaint reasonably necessary under the circumstances.
  - c. A Title IX Coordinator shall not sign a formal complaint against the wishes of a complainant if involving an unwilling complainant in the grievance process would be clearly unreasonable in light of the known circumstances.
  - d. If a Title IX Coordinator signs a formal complaint alleging Title IX sexual harassment, the complaint shall be processed as provided, below, within this rule.
  - e. Upon signing a formal complaint, the Title IX Coordinator does not become a complainant or a party to the complaint, and any complainant who is identified in relation to the allegations retains his/her status as a complainant in connection with the grievance process.
6. Nothing in this rule diminishes the District's obligations to respond to Title IX sexual harassment or allegations of Title IX sexual harassment in a prompt manner that is not deliberately indifferent in all circumstances in which the federal Title IX regulations deem the District to have actual knowledge of such harassment.

## **Supportive measures in connection with any report, formal complaint, or other notice to the District of Title IX sexual harassment**

1. "Supportive measures" are expressly defined and further described in the definitions section of this rule (see below).
2. The District will provide supportive measures to complainants to the extent required by the Title IX regulations. The District may provide supportive measures to a respondent, but it is not required to do so in all cases.
3. Any time a Title IX Coordinator becomes aware that the District has actual knowledge of Title IX sexual harassment or allegations of Title IX sexual harassment, the Title IX Coordinator shall:
  - a. Promptly contact the complainant, if known, to:
    - i. Discuss the availability of supportive measures;
    - ii. Consider the complainant's wishes with respect to supportive measures;
    - iii. Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
    - iv. Explain to the complainant the process for filing a formal complaint (if the complainant has not already filed a formal complaint about the conduct).

- b. Coordinate the identification, offering, and implementation of supportive measures that the District provides to a complainant or respondent, including appropriate monitoring of the implementation process, coordinating potential modifications to the measures, and, as applicable, determining the appropriate time to end specific supportive measures.
4. All District officials, employees, and other persons acting as agents of the District must maintain as confidential any supportive measures provided to a complainant or respondent to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures.
5. The District is required to document any supportive measures that the District provides in response to a report or formal complaint of Title IX sexual harassment. Conversely, if the District does not provide a complainant with supportive measures for any reason, then the District is required to document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

**Grievance process for handling formal complaints  
of sexual harassment under Title IX**

This grievance process applies to formal complaints of Title IX sexual harassment. Except to the extent a formal complaint is dismissed (in whole or in part), the District is obligated to investigate a formal complaint of Title IX sexual harassment pursuant to this process. The District is further obligated to treat complainants and respondents equitably by:

1. Offering supportive measures to a complainant (see above).
2. Following this grievance process before imposing disciplinary sanctions or other punitive actions against a respondent for any alleged Title IX sexual harassment, subject to the allowances made in the federal Title IX regulations for implementing supportive measures, implementing an emergency removal, and placing an employee, while a formal complaint is pending, on administrative leave.
3. Providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent.
4. Requiring its agents to adhere to the additional requirements and standards set forth below.

**Assignment of Roles for Processing Formal Complaints**

Unless otherwise directed by the School Board and except as otherwise provided in this section, the District Administrator or his/her administrative-level designee (who may be the Title IX Coordinator) will designate and assign qualified individuals to perform the roles that are defined for District agents within the District's grievance process for formal complaints of Title IX sexual harassment. In addition:

1. The District Administrator may assign one or more of the roles to a qualified individual who is not an employee of the District, including an outside attorney or other contracted service provider, with notice to the Board.
2. The Title IX Coordinator and the District Administrator shall ensure that the individual(s) assigned to perform such roles have completed any training required by the federal Title IX regulations.
3. If the District determines that a person assigned to such a role is unavailable, disqualified by a conflict of interest or bias, or otherwise unable to perform the responsibilities of the role, the administration shall assign another qualified individual to perform the role.

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4. The Board or a person designated by the Board shall assign such roles with respect to any formal complaint in which the District Administrator is alleged to be the perpetrator of conduct that could constitute Title IX sexual harassment. The Title IX Coordinator and the District Administrator shall inform the Board of any such need to assign the roles.

## **Standards Applicable to District Agents Involved in the Grievance Process**

At the point that the Title IX Coordinator determines that a formal complaint involving allegations of Title IX sexual harassment is pending, the Title IX Coordinator shall ensure that the District assigns the roles of complaint investigator, responsibility decision-maker, and appeal decision-maker on a timely basis, whether at the outset of the process or during the process. All such individuals, whether or not District employees, must be appropriately trained to perform their role. The assigned roles shall be performed by different persons to the extent required by the federal Title IX regulations. The District may re-assign the roles or assign multiple qualified individuals to perform specific roles if deemed appropriate in a particular case.

All persons who are authorized to act as agents of the District in connection with the grievance process, including but not limited to any Title IX Coordinator, complaint investigator, decision-maker, or facilitator of an informal resolution process, are required to:

1. Engage in an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence.
2. Avoid making any credibility determinations based on a person's status as a complainant, respondent, or witness.
3. Be free from any conflict of interest that impermissibly inhibits the person's objectivity, impartiality, or independent and good-faith judgment.
4. Avoid exhibiting or applying any bias for or against complainants or respondents generally, or for or against an individual complainant or respondent.
5. Self-report any known pre-existing relationships (familial, social, etc.) to parties or material witnesses and any other known circumstances that relate to a formal complaint and that may reasonably cause the District to disqualify the person from performing a particular role as an agent of the District in the grievance process due to concerns with a conflict of interest or bias. Such a report may be made to a Title IX Coordinator or to the District Administrator. Previous interactions with a complainant, respondent, or material witness in a professional capacity, standing alone and in the absence of other specific circumstances, would normally be insufficient to raise a material concern about a conflict of interest or bias.
6. Apply a presumption, throughout the course of performing their designated role(s), that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
7. Refrain from requiring, allowing, relying upon, or otherwise using questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege (e.g., attorney-client privilege), unless the person holding such privilege has waived the privilege.
8. Refrain from accessing, considering, disclosing, or otherwise using a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the District

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obtains that party's voluntary, written consent to do so for purposes of the grievance process (if a party is under 18 years old, then the District must obtain the voluntary, written consent of a parent or guardian).

9. Maintain confidentiality with respect to the identities of persons involved in the grievance process to the extent required by 34 C.F.R. §106.71(a).
10. Avoid restricting the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence, except to the extent permitted or required by applicable law. This provision does not restrict the District or its agents from requiring the parties to a formal complaint (including their advisors) to refrain from disseminating certain evidence or other records to others, provided that any such requirement(s) must be lawful and must not unreasonably interfere with the purposes of this grievance process. In some situations, established law may independently prohibit any such dissemination of particular evidence/records.

## **The Main Procedural Steps of the Grievance Process**

Subject to the provisions, below, regarding (1) voluntary informal resolution processes, and (2) the dismissal of complaints or any individual allegations within a complaint, the following steps outline the main procedures of the grievance process.

### **I. Notice of the allegations, the grievance process, and certain rights.**

Normally within [15] business days of receiving a formal complaint, and always at least [5] calendar days before a party will be required to appear for an initial investigative interview, a Title IX Coordinator or his/her designee shall provide all known parties (i.e., complainant(s) and respondent(s)) with written notice of the following:

1. The District's grievance process for formal complaints of Title IX sexual harassment, including a description of any informal resolution process.
2. Notice of the allegations potentially constituting sexual harassment as defined under the Title IX regulations, including sufficient details known at the time. Sufficient details include:
  - a. The identities of the parties involved in the incident(s), if known;
  - b. The conduct allegedly constituting sexual harassment under Title IX; and
  - c. The date and location of the alleged incident(s), if known.
3. The written notice must also:
  - a. Include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
  - b. Inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, who may accompany the party when the party attends any District meeting or proceeding that is part of the grievance process (including investigative interviews).
  - c. Inform the parties that they will have the right to inspect and review the evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, as further provided under the Title IX regulations.
  - d. Inform the parties that, by policy, the District prohibits a person from knowingly making false statements or knowingly submitting false information during the grievance process.

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If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that were not included in the initial notice of allegations, the Title IX Coordinator or the complaint investigator, or a designee acting on their behalf, must provide written notice of the additional allegations to all parties whose identities are known.

## **II. Investigation of the allegations**

An investigator assigned by the District will conduct an investigation of the allegations of which the parties have been notified (as provided in the previous step). The purpose of the investigation is to gather evidence.

The District has the burden of gathering evidence, both inculpatory and exculpatory, sufficient to reach a determination regarding responsibility. In addition, because the District has the burden of proof, the District bears the burden of conducting a balanced and sufficiently comprehensive investigation such that the burden of proof is not shifted to either of the parties to affirmatively put forth the evidence that would be necessary to either prove or defeat the allegations.

When conducting the investigation, an investigator will:

1. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of any investigative interview or other meeting held as part of the investigation, with sufficient time for the party to prepare to participate.
2. Allow any party to be accompanied to any investigative interview or other meeting held as part of the investigation by one advisor of their choice. Under any circumstances where a parent or guardian has a legal right to act on behalf of a party (e.g., because the party is a minor), the party's parent or guardian may also accompany the party to any such meeting.
3. Conduct one or more investigative interviews of the complainant(s), the respondent(s), and such witnesses as the investigator determines may provide relevant evidence that is able to be considered and that is not unduly duplicative.
4. Offer each party an opportunity to identify fact and expert witnesses who the party believes should be interviewed as part of the investigation, along with the nature of the evidence that the party believes the witness may be able to provide. If the investigator declines to interview a witness identified by a party or is unable to interview a witness (e.g., because the witness is not willing to participate or is not reasonably available), the investigator shall document the reason for such decision or unavailability and, unless prohibited by law from doing so, provide the parties with such explanation upon request.
5. Consider such documentary and other evidence as a party may wish to proffer, except that no party or his/her advisor will be permitted to conduct direct, in-person questioning of another party or of any third-party witness at any interview or investigative meeting called by the District. If the investigator rules that any proffered evidence will not be accepted into the record of the investigation, the investigator shall document the reason for such ruling; return the evidence to the party that offered it (in the case of physical evidence); and, unless prohibited by law from doing so, provide the parties with the reason the evidence was rejected upon request.
6. Accept such other evidence into the record as the investigator deems to be relevant and directly related to the pending allegations, recognizing that nothing prohibits an investigator from initially accepting evidence that may not be relevant.

After the investigator completes the process of gathering evidence:

1. An investigator, or a designee acting on his/her behalf, must send to each party and the party's advisor, if any, the evidence obtained from the investigation that is subject to inspection and review. Such evidence

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may be provided in an electronic format or as a hard copy, and consists of the evidence obtained as part of the investigation that is directly related to the pending allegations, including:

- a. Both inculpatory or exculpatory evidence, whether obtained from a party or other source; and
  - b. Any such evidence upon which the District does not intend to rely in reaching a determination regarding responsibility.
2. Beginning from the date that the evidence is delivered to the parties, the investigator(s) must give the parties at least 10 calendar days to submit a written response to the evidence. Providing such a response is optional.
  3. After receiving and giving due consideration to any timely written responses received from the parties, the investigator(s) shall complete an investigative report that fairly summarizes the relevant evidence.
    - a. In the report, the investigator may convey facts, observations, or impressions that address the credibility of particular persons or other evidence, but any such credibility assessments conveyed in the report are not binding on the decision-maker(s).
    - b. Although neither required nor specifically preferred, the report may include recommended findings of fact or recommended conclusions. Any such recommendations should be clearly identified as such. The report should not advocate for or take any position regarding the imposition or non-imposition of specific sanctions. Even in cases where an investigator conveys recommended findings or conclusions, the decision-maker(s) retain an obligation to objectively evaluate the relevant evidence, apply their independent judgment, and reach a determination. A decision-maker shall not simply defer to any recommendations made by the investigator.
  4. Upon completion of the investigative report:
    - a. An investigator or his/her designee shall send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy. No determination of responsibility shall be made until at least 10 calendar days after the date that the report is sent to the parties.
      - i. When sending the report to the parties and any advisor, the investigator or a designee will inform the parties that, if desired, they may submit a written response to the report. The investigator shall identify the procedure and timeframe for submitting any such response. Any deadline for the submission shall be at least 10 calendar days after the report is sent to the parties **and** prior to the time that any determination of responsibility is made. Any such response will be considered as part of the decision-making phase (see below) and added to the record of the proceedings.
      - ii. As addressed in more detail in section III, below, the communication informing the parties of their opportunity to submit a written response to the investigative report may, at the same time, also inform the parties of the procedure and deadline for submitting written, relevant questions (if any) that the party wants asked of any party or witness as part of the decision-making phase. The procedure and deadline for the submission of any such questions should be determined by or in consultation with the designated decision-maker(s), and the deadline shall not be shorter than the minimum time period specified in section III, below.
    - b. An investigator or his/her designee will forward the final investigative report and the complete investigative record, as it then stands, to the District-designated decision-maker(s) for a determination of responsibility.

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5. If, at any point during the process, the investigator provides any additional opportunities to submit additional evidence, or to further respond to any statements, questions, or additional evidence, such additional discretionary opportunities must apply equally to both parties. At the discretion of the investigator and prior to the conclusion of the grievance process, the investigative report may be clarified, corrected, or amended provided that the investigator or a designee provides prompt notice of any such changes to the decision-maker(s) and to the parties and any party's advisor.

### **III. Determinations of responsibility**

A decision-maker assigned by the District will make a determination of responsibility with the respect to the allegations of which the parties have been notified and that have been subject to investigation (as provided in the previous steps), based on an analysis of the relevant evidence. During this stage of the proceedings:

1. As early as the point at which the District provides the final investigative report to the parties, or shortly thereafter, an investigator, decision-maker, or designee acting on their behalf shall inform each party that they have the opportunity to submit written, relevant questions that the party wants asked of any party or witness prior to the determination of responsibility, subject to the following:
  - a. The notice of the opportunity to submit such questions shall identify a submission deadline and the allowable method(s) of submission. Beginning from the date that the notice is delivered, the District shall allow the parties at least [5] calendar days to submit any questions.
  - b. If any questions are submitted by the parties, the decision-maker shall either:
    - i. Pose the submitted questions to the relevant person(s) and provide each party with the answers; or
    - ii. Explain to the party proposing the questions any decision to exclude a question as not relevant or as otherwise impermissible in the context of this grievance process.
  - c. If any questions were submitted, posed, and answered as provided immediately above, then the decision-maker shall permit a limited opportunity for the parties to submit follow-up questions. Any such follow-up questions must be reasonably related to the initial question and answers and must not be unduly duplicative of other evidence that is already in the record.
    - i. The decision-maker shall identify a submission deadline for such follow-up questions, which shall be a minimum of [3] calendar days from the date that the parties are provided with the answers to the initial questions.
    - ii. The decision-maker shall either pose the follow-up questions and provide each party with the answers or explain any decision to exclude a question, in the same manner that applied to the initial questions.
2. Neither a decision-maker nor any person acting as the decision-maker's designee may hold a live, adversarial hearing involving the parties as part of this Title IX grievance process.
3. In making determinations of responsibility with respect to the allegations addressed in the relevant investigative report, the decision-maker shall, in all cases, evaluate the available evidence and apply the "preponderance of the evidence" standard to determine whether any allegation has been substantiated and whether a party has committed any misconduct with respect to such allegation(s).
4. The decision-maker must issue a written determination regarding responsibility that includes all of the following:
  - a. Identification of the allegations potentially constituting sexual harassment under Title IX;

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- b. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and any other methods used to gather evidence;
  - c. Findings of fact supporting the determination;
  - d. Conclusions regarding the application of the relevant legal standards and the District's code of conduct (i.e., any District policies or rules that apply to the party in question);
  - e. A statement of, and rationale for, the result as to each allegation, including all of the following:
    - i. A determination regarding responsibility;
    - ii. Any disciplinary sanctions the District imposes on the respondent or, in cases where a particular disciplinary sanction is beyond the direct authority of the decision-maker, a statement of the disciplinary sanction(s) that the decision-maker is recommending as an appropriate consequence;
    - iii. Whether the District will provide the complainant with any remedies designed to restore or preserve the complainant's equal access to the District's education program or activity; and
    - iv. The District's procedures and permissible bases for the complainant and respondent to file an appeal under this grievance process. If a formal complaint of Title IX sexual harassment also constitutes a complaint of pupil discrimination under Chapter PI 9 of the Wisconsin Administrative Code, the District may also use this notice to inform the complainant of their right to appeal any adverse final determination of their complaint under state law to the State Superintendent of Public Instruction, as well as the procedures for making such an appeal to DPI.
5. The decision-maker or a designee acting on his/her behalf must provide the written determination to the parties simultaneously.
  6. To the extent required by the Title IX regulations, disciplinary sanctions for Title IX sexual harassment and any remedies that could not be offered as supportive measure shall not be enforced until the determination of the complaint becomes final. The determination regarding responsibility becomes final, for District purposes, either:
    - a. If no appeal is filed, on the date on which an appeal would no longer be considered timely; or
    - b. If an appeal is filed, on the date that the District provides the parties with the written determination of the result of the appeal (see below).

#### **IV. Appeals following a determination of responsibility**

1. A complainant or respondent may file an appeal following:
  - a. Receipt of the written determination regarding responsibility; and
  - b. Receipt of notice of dismissal of a formal complaint or of any allegations within a complaint.
2. Any appeal filed by a party is strictly limited to one or more of the following bases:
  - a. A procedural irregularity that affected the outcome of the matter.
  - b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.

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- c. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest in the case or a bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
3. An appeal must be filed in writing and submitted either in person, via U.S. mail, or via email to the Title IX Coordinator with a copy provided to the initial decision-maker. An appeal must be delivered to the District within [5] business days from the date the written determination or notice of dismissal is delivered to the party. The notice of appeal submitted by a party must do all of the following:
  - a. Clearly identify the specific bases, from those listed above, on which the party is appealing; and
  - b. With reasonable specificity, state the factual basis for the appeal and the reasoning as to why the decision or dismissal being appealed from should be reversed or modified.
4. In connection with an appeal, a party may not introduce new evidence that is outside of the existing record of the complaint proceedings except as an offer of proof to support or refute a claimed conflict of interest or bias, or except in support of or in direct response to an appeal that is premised on a claim that certain new evidence was not reasonably available at an earlier time.
5. Upon receiving a notice of appeal from a party, the Title IX Coordinator, appeal decision-maker, or a designee acting on their behalf shall promptly notify the other party (or parties), if known, that an appeal has been filed and provide a copy of the appeal to such other party (or parties).
6. The appeal decision maker will establish and inform all parties of a deadline for submitting any additional written statement the party may wish to submit in support of, or challenging, the original outcome on the grounds raised by any pending appeal. The deadline for such submissions shall be at least [5] calendar days following the date such notice is delivered to the parties.
7. An appeal decision maker shall deny an appeal that merely asserts that the District's decision is wrong (i.e., without identifying the applicable grounds for the assertion) or that fails to present a reasonably-developed argument in support of the appeal.
8. If the appeal decision-maker determines that there is a need to open the record to obtain and consider any additional evidence in order to resolve an appeal, the appeal decision-maker may offer additional equal opportunities for the parties to address and respond to any such new evidence if doing so is necessary to preserve the fairness of the proceedings.
9. The District may continue an ongoing investigation into a formal complaint during an appeal with respect to the dismissal of a complaint in part (i.e., dismissal of specific allegations). However, the investigation shall not be concluded until the appeal over the dismissed allegation(s) is decided.
10. The appeal decision-maker shall:
  - a. Issue a written decision describing the result of the appeal and the rationale for the result; and
  - b. Provide the written decision simultaneously to both parties.
11. The appeal decision-maker shall render the written decision within [15] business days of the deadline that he/she established for the receipt of the parties' written statements on appeal unless he/she communicates an extension of such timeframe, as further described below.

## **Other Elements, Requirements, and Limitations of the Grievance Process**

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**Supportive Measures During the Grievance Process.** The range of supportive measures available to complainants and respondents during and in connection with this grievance process does not materially change based on the fact that a formal complaint of sexual harassment under Title IX is pending. Supportive measures, as described and defined elsewhere in this rule, are available based on the District's actual knowledge of Title IX sexual harassment or allegations of Title IX sexual harassment, and the receipt of a formal complaint is one source of such knowledge. At the same time, supportive measures are intended to be individualized and context-sensitive. If the proceedings related to this grievance process create any changed circumstances or any special needs for a party, the party may contact a District Title IX Coordinator for the purpose of discussing potential modifications to supportive measures.

**Dismissals of Formal Complaints.** Upon receipt of a formal complaint that alleges or purports to allege Title IX sexual harassment and at other points in the grievance process while a formal complaint is pending, the District is responsible for evaluating whether, pursuant to the federal Title IX regulations, the complaint (1) must be dismissed (whether in whole or in part); or (2) may be dismissed (whether in whole or in part) as an exercise of District discretion. The District expects its Title IX Coordinator(s), complaint investigators, and decision-makers to promptly raise the issue of dismissal as needed.

1. **Mandatory dismissal:** The District must dismiss a formal complaint (or specific allegations within the complaint), for purposes of Title IX and the District's Title IX grievance process, to the extent the conduct alleged in the complaint:
  - a. Even if proved, would not constitute sexual harassment as defined in the federal Title IX regulations; or
  - b. Did not occur within the scope of the District's education program or activity; or
  - c. Did not occur against a person in the United States.
2. **Discretionary dismissal:** At any time during the investigation of a formal complaint and prior to the determination of responsibility, the District may dismiss a formal complaint, or any allegations therein, if:
  - a. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
  - b. The respondent is no longer enrolled in the District or employed by the District; or
  - c. The District determines that specific circumstances prevent the District from gathering evidence that is sufficient to reach a determination as to the formal complaint or any allegations therein.
3. **Dismissal procedures:**
  - a. At least one of the following administrators, acting in consultation as needed with District legal counsel, must authorize the dismissal of a formal complaint of Title IX sexual harassment or any individual allegations within such a complaint: District Administrator, Director of Special Education, Director of Human Resources, Executive Director of Operations.
  - b. The Title IX Coordinator or a designee must promptly send written notice of the dismissal and the reason(s) for the dismissal simultaneously to all parties (to the extent known).
  - c. A dismissal is an appealable decision to the extent identified elsewhere in this grievance process.

If a formal complaint or any allegation within a complaint is dismissed for purposes of Title IX, the District retains discretion, to the extent permitted by law, to take action with respect to the dismissed allegations or related conduct under other District policies and procedures (e.g., if the alleged conduct could constitute discrimination other than Title IX sexual harassment or if the conduct could constitute a violation of any District policy or rule of conduct). However, particularly in connection with some discretionary dismissals, there may be limits on the

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District's authority to further pursue disciplinary action or other sanctions with respect to dismissed allegations, and the administration may need to seek legal advice in such scenarios.

**Voluntary Informal Resolution of Formal Complaints.** To the extent permitted by the Title IX regulations, the District may offer and facilitate a strictly voluntary informal resolution process which attempts to resolve the allegations of a formal complaint of Title IX sexual harassment, in whole or in part, without a full investigation and adjudication. An informal resolution process may not be used in connection with allegations that a District employee sexually harassed a student.

In order to offer and attempt an informal resolution process, a formal complaint must have been filed. In addition, before conducting any informal resolution process, the District must:

1. Provide both parties with a written disclosure notice regarding the informal process, as further outlined in the federal Title IX regulations (see 34 C.F.R. §106.45(b)(9)(i)); and
2. Obtain each party's voluntary, written consent to participate in the informal resolution process.

As examples of informal processes that may be appropriate in some circumstances, the District's agents may (1) offer to mediate a resolution between the parties identified in a formal complaint; or (2) explore the parties' willingness to voluntarily proceed without a full investigation and/or adjudication when the facts may be undisputed or where there may be an opportunity to reach stipulated facts.

If a voluntary informal resolution has not reached a conclusion within [15] business days of the date that the District received the consent of the parties, the District and the parties may mutually and voluntarily agree to extend the timeframe for attempting an informal resolution. In the absence of a mutual agreement to extend the timeframe, the District will provide reasonably prompt written notice to the parties that the informal process is being abandoned and that the District will resume the formal process.

**Disciplinary Sanctions.** After a determination that a party is responsible for Title IX sexual harassment as a result of this grievance process, the disciplinary sanctions that the District may impose will depend on the nature of the misconduct and the individual's then-current status as a student, employee, or other person connected to the District's education program or activity. Disciplinary sanctions that are issued or recommended as a result of a determination of responsibility for Title IX sexual harassment are intended as consequences for past misconduct and/or as a deterrent against any future sexual harassment. To the extent the District reaches a determination using this grievance process that a party engaged in conduct that was not Title IX sexual harassment but that did violate some other law or District policy or rule, this grievance process does not directly address the disciplinary consequences for such conduct, even though the District may impose disciplinary consequences for such conduct.

1. **Students:** The range of possible disciplinary sanctions or recommended sanctions for students includes but is not limited to suspension from school, expulsion from school, and disciplinary suspension of eligibility to participate in District-sponsored extracurricular activities. The District may also prohibit the student from being present on District property or at certain District-sponsored events or activities to an extent that exceeds actions that would be allowable as supportive measures. This provision does not modify any student's rights under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.
2. **Employees:** The range of possible disciplinary sanctions or recommended sanctions for employees includes but is not limited to a formal reprimand, an indefinite demotion or salary reduction, a disciplinary reassignment exceeding what may be allowed as a supportive measure, an unpaid suspension, contract nonrenewal, and termination of employment. At the District's discretion, such sanctions may be structured with or without special conditions, such as notice of a zero-tolerance policy for any prospective related violations, or a directive prohibiting the employee from being present on District property or at

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certain District-sponsored events or activities to an extent that exceeds actions that would be allowable as supportive measures.

- 3. Other persons:** The range of possible disciplinary sanctions or recommended sanctions for other persons includes but is not limited to suspension from or the termination of a District-authorized role (e.g., volunteer), termination or nonrenewal of contracts, and a directive prohibiting the individual from being present on District property or at certain District-sponsored events or activities to an extent that exceeds actions that would be allowable as supportive measures.

**Remedies to Benefit Complainants.** After a determination that a party to the grievance process was responsible for Title IX sexual harassment, the District may provide the complainant with remedies designed to restore or preserve equal access to the District's education program or activity, including providing for a safe educational or working environment. Such remedies may include the continuation or addition of individualized accommodations, services, and interventions that could have been provided as "supportive measures" prior to the determination of responsibility. However, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

**Timeframes and Extensions.** The District normally intends to conclude the grievance process within 90 calendar days of the date that a formal complaint is filed or signed by a Title IX Coordinator, recognizing that in certain circumstances it may be practical to complete the process in less time, and in other circumstances the process may reasonably require more time.

Any party or witness may, for good cause, request (1) a temporary delay in the grievance process; (2) the rescheduling of an investigative interview or other meeting; or (3) a limited extension of a deadline that applies to the party. Any such request shall be submitted in writing to the investigator, decision-maker, or appeal decision-maker, given the applicable stage of the proceedings.

The investigator, decision-maker, or appeal decision-maker (as applicable) may grant such a request, and may also self-initiate such a delay, rescheduling, or extension, upon determining that there is good cause and that approving the request would not be unduly prejudicial to any of the parties or unreasonably extend the conclusion of the grievance process.

Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; the complexity of the allegations; or the need for language assistance or accommodation of disabilities. In evaluating whether good cause exists with respect to a party's request, the District may take into account the party's history of requesting delays or extensions and the reasons for any such prior requests.

Although the agents of the District are expected to make reasonable efforts to accommodate the schedules of parties and witnesses, the District also may not, without good cause, deviate from its own designated timeframe for the grievance process. Accordingly, the District retains discretion to grant a shorter delay or extension than was requested. Further, in some cases, the District may deny a scheduling request and, if necessary, proceed with the grievance process in the absence of a party, a party's advisor, a party's filing/response, or a witness.

If a formal complaint of Title IX sexual harassment also constitutes a complaint of pupil discrimination under Chapter PI 9 of the Wisconsin Administrative Code, and if a requested or contemplated delay/extension would prevent the District from reaching a determination of the complaint within 90 calendar days, the District's agents shall evaluate whether it is necessary or appropriate to request the parties' consent to the delay/extension.

The appropriate agent of the District or a designee shall provide the complainant and respondent with prompt written notice of any decision to delay the grievance process or grant an extension of a deadline. Such notice shall include the reason(s) for the action. To the extent a given deadline applies to multiple parties, any extension of the deadline automatically applies to all such parties.

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**Consolidation of Formal Complaints.** The District may consolidate formal complaints of Title IX sexual harassment where the allegations of sexual harassment in the different complaints arise out of the same facts or circumstances.

**Concurrent Investigation and Consideration of Multiple Potential Grounds for a Determination of Responsibility/Misconduct.** If the allegations set forth in a formal complaint of Title IX sexual harassment also constitute or fairly encompass allegations of conduct that could constitute (1) discrimination under a different law, or (2) a violation of a District policy or rule (including any District code of conduct that may be applicable to the respondent), or (3) any other established grounds for the imposition of possible disciplinary sanctions, then the District may, at its discretion, investigate the facts and circumstances related to such other legal or policy standards using this grievance process and apply the facts, as found through the investigation, to all potential grounds for a finding of responsibility/misconduct and possible discipline. Unless otherwise required by law, the investigation and determinations reached through this grievance process shall constitute sufficient processing of any such related, overlapping, or intertwined complaint(s), allegations, or charges that may arise out of the same facts or circumstances as the allegation(s) of Title IX sexual harassment.

In all cases involving such concurrent investigation and concurrent consideration of such additional complaint(s), allegations, or charges, the District's agents in the grievance process are responsible for giving the parties adequate notice of the scope of the allegations to be investigated and of the different grounds for a potential finding of liability/responsibility (e.g., federal law, state law, or a local policy or rule). The District's agents are also responsible for adequately identifying the specific basis for any determination of responsibility or finding of misconduct. For example, a decision-maker might conclude in a given case that the facts as found do not rise to the level of Title IX sexual harassment, but that the complaint is substantiated with respect to prohibited harassment as defined under Chapter PI 9 of the Wisconsin Administrative Code and under District policy.

**Restrictions on the Participation of Parties' Advisors.** An advisor of the party's choosing shall be permitted to accompany the party to any investigative interview or other meeting held in connection with this grievance process. However, no person who accompanies a party to a meeting or otherwise serves as an advisor to the party may unreasonably interfere with or unreasonably delay the District's investigation. Unreasonable interference by an advisor includes, for example:

1. Answering the District's questions on behalf of the party during an investigative interview, such that the District is denied the party's own, direct response.
2. Interrupting District questioning with the goal of prompting or suggesting responses for the party.
3. Interrupting District questioning in an attempt to conduct his/her own questioning of the party.

The District's agents in the grievance process may place further reasonable restrictions on the extent to which an advisor may participate in the proceedings, provided that such restrictions apply equally to both parties.

**Prohibition on Retaliation.** Neither any official, employee or agent of the District, nor any student, nor any other person may, in any unlawful manner, intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, or because the individual has made a report or complaint, testified, assisted, or participated or exercised an enforceable legal right to refuse to participate in any manner in an investigation or any proceeding conducted under the auspices of the District's Title IX obligations. Complaints alleging retaliation in violation of this provision may be filed according to the reporting and grievance procedures that the District has established for general complaints of unlawful discrimination based on sex and other legally-protected classifications.

**Prohibition on Bad Faith Conduct.** To the extent permitted by law, the District reserves authority to appropriately address and impose consequences for bad-faith conduct by individuals who make a report or complaint, testify, assist, or participate in any manner in a Title IX investigation or other Title IX proceeding. For example, the District may impose lawful consequences for making a materially false statement in bad faith in the course of any proceeding that is conducted under the auspices of the District's Title IX obligations. *However, a determination that a report or complaint of any form of discrimination based on sex was not substantiated, standing alone, is not sufficient to conclude that any party made a materially false statement in bad faith.*

### **Definitions**

Within the Title IX grievance process set forth in this rule:

- **Business days** means days that the main administrative office of the District is staffed, in person or virtually, for responding to regular business and public contacts. Business days never include Saturday or Sunday.
- The terms "**written**" or "**in writing**" include a notice or communication provided in hard copy format via hand delivery or via U.S. Mail to the address of record or in an electronic format via an email sent to an email address that has been issued by the District or that has been provided by the intended recipient.
- With respect to a communication sent by electronic mail, an email is deemed to be **delivered** when it was first electronically available to be accessed by the recipient, and delivery presumptively occurs on the same day as the email was sent. With respect to a communication sent by U.S. Mail, the communication is deemed **delivered** on (1) the date reflected on any confirmation of delivery or delivery receipt; or (2) three business days after the communication was sent by First Class Mail if no delivery confirmation was requested.
- Proof by a **preponderance of the evidence** means that a decision-maker must determine, based on an evaluation of all relevant evidence, whether alleged facts are more likely than not to be true.

In connection with any report or complaint that alleges a sexual assault and when (1) the absence of the consent of the alleged victim is a relevant element of the alleged offense, and (2) the alleged victim is considered legally competent to potentially give consent:

- Unless otherwise required by law in connection with the District's evaluation, investigation, or determination of the alleged conduct, the terms **consent** and **without consent** shall be determined using the definition found in section 940.225(4) of the state statutes, subject to the following for these District-related purposes: (1) a finding that conduct occurred without the consent of the alleged victim needs to be proven by the evidentiary standard established in this grievance process; and (2) the words and actions of the alleged victim are to be evaluated from the perspective of what a reasonable person would understand them to mean, such that if the conduct is found to have occurred without the consent of the alleged victim under the relevant standard, then a showing that the respondent had formed a subjective belief that the alleged victim had consented is not a defense that defeats the finding of an absence of consent.

The following terms within this rule have the definitions specified in the federal Title IX regulations, including all applicable exclusions, exceptions, and clarifications of scope found in the federal regulations. Paraphrasing the applicable regulatory provisions:

- **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment, regardless of how the District gained actual knowledge of the alleged sexual harassment. Therefore, not every person who reports an allegation of Title IX sexual harassment is a complainant.

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- **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- **Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to (1) the District's Title IX Coordinator; (2) any District official who has authority to institute corrective measures on behalf of the District; or (3) any employee of the District other than a respondent (i.e., in circumstances where the respondent is a District employee). "**Notice**" as used in this definition includes, but is not limited to, a report of sexual harassment to the District's Title IX Coordinator.
- **Education program or activity** includes any locations, events, or circumstances over which the District exercised substantial control over both (1) the respondent, and (2) the context in which the sexual harassment or alleged sexual harassment occurred.
- **Formal complaint** means a document filed by an eligible complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment under Title IX. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the District. As used in this definition, the phrase "**document filed by an eligible complainant**" means a document or electronic submission (such as by electronic mail) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- "**Supportive measures**" or "**supportive measures under Title IX**" means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint of sexual harassment under Title IX or where no such formal complaint has been filed. Such measures are designed to restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party, including measures designed to (1) protect the safety of all parties or the District's educational environment, or (2) deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, additional supervision or planned accompaniment, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security, supervision, or monitoring of certain areas of school grounds, and other similar measures.
- "**Sexual harassment under Title IX**" and "**Title IX sexual harassment**" mean conduct on the basis of sex in any District education program or activity, occurring in the United States, that satisfies one or more of the following:
  1. An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct;
  2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the District's education program or activity; or
  3. Any of the following, as defined under the Title IX regulations by reference to other federal statutes:
    - a. "sexual assault," as defined in [20 U.S.C. 1092\(f\)\(6\)\(A\)\(v\)](#), to mean an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including but not limited to rape, sexual assault with an object, and groping.
    - b. "stalking," as defined in [34 U.S.C. 12291\(a\)\(30\)](#).
    - c. "dating violence," as defined in [34 U.S.C. 12291\(a\)\(10\)](#).
    - d. "domestic violence," as defined in [34 U.S.C. 12291\(a\)\(8\)](#).

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- **Stalking**, as defined in [34 U.S.C. 12291\(a\)\(30\)](#), means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  1. fear for his or her safety or the safety of others; or
  2. suffer substantial emotional distress.
- **Dating violence** as defined in [34 U.S.C. 12291\(a\)\(10\)](#), means violence committed by a person-
  1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  2. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - a. The length of the relationship;
    - b. The type of relationship; and
    - c. The frequency of interaction between the persons involved in the relationship.
- **Domestic violence**, as defined in [34 U.S.C. 12291\(a\)\(8\)](#), includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the state's domestic or family violence laws, or by any other person against an adult or youth victim who is protected from that person's acts under the state's domestic or family violence laws.

## Cross References:

WASB PRG 113 Sample Rule 1

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