

**4GRIEVANCE PROCEDURES FOR COMPLAINTS OF
TITLE IX SEX-BASED DISCRIMINATION AND HARASSMENT
AND OTHER FORMS OF DISCRIMINATION AND HARASSMENT**

[NOTE: SELECT THE FOLLOWING TWO OPTIONS IF THE CENTER (SCHOOL) MAINTAINS SEPARATE PROCESSES TO ADDRESS:

- 1. GRIEVANCE PROCEDURES FOR TITLE IX COMPLAINTS*
- 2. COMPLAINTS ADDRESSING OTHER TYPES OF DISCRIMINATION OR HARASSMENT.]*

The Title IX sex-based discrimination and harassment grievance procedures prescribed in this attachment apply only when a complaint includes allegations of sex-based discrimination or harassment, including retaliation, subject to Title IX regulations. (34 CFR 106.44, 106.45)

All other reports or complaints of discrimination, harassment or retaliation will follow the Discrimination Complaint Procedures attached to Policy 103.

[NOTE: SELECT THE OPTION BELOW IF THE CENTER (SCHOOL) FOLLOWS THE SAME PROCESS FOR ALL REPORTS OF DISCRIMINATION/HARASSMENT AND TITLE IX SEX-BASED DISCRIMINATION AND HARASSMENT.]

All reports or complaints of discrimination and harassment, including retaliation, whether the conduct falls under Title IX sex-based discrimination and harassment or not, will be handled in accordance with the Grievance Procedures prescribed in this attachment.

General Provisions

If the center (school) has knowledge of conduct that reasonably may constitute Title IX sex-based discrimination or harassment

or other forms of discrimination or harassment,

in its education program or activity, it must respond promptly and effectively.

Persons of **parental status** have the right to act on behalf of the complainant, the respondent or other **student** at any time.

The center (school) requires that the Title IX Coordinator, investigator and decision-maker be free from any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

As long as there is no conflict of interest or bias, the decision-maker may be the same person as the Title IX Coordinator or investigator during the grievance procedures; however, the facilitator for an informal resolution process must not be the same person designated as the investigator or decision-maker for the grievance procedures.

The center (school) will treat all complainants and respondents equitably.

The center (school) will assume that the respondent is not responsible for the alleged conduct until a determination is made at the conclusion of the informal resolution process or grievance procedures.

Definitions

Exculpatory evidence means evidence tending to exonerate the accused or helps to establish their innocence.

Inculpatory evidence means evidence tending to incriminate the accused or indicate their guilt.

Impermissible evidence means evidence, and questions seeking such evidence, that will not be accessed or considered, except by the center (school) to determine whether one (1) of the exceptions listed below applies; will not be disclosed; and will not otherwise be used, regardless of relevance:

- 1. Evidence that is protected under a privilege as recognized by federal or state law or regulations, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.**
- 2. A party's or witness's records that are made or maintained by a physician, psychologist or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the center (school) obtains that party's or witness's voluntary, written consent for use in the center (school)'s grievance procedures.**
- 3. Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.**

Relevant means related to the allegations under investigation as part of the grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged conduct occurred, and evidence is relevant when it may aid a decision-maker in determining whether the alleged conduct occurred.

Remedies means measures provided, as appropriate, to a complainant or any other person the center (school) identifies as having had their equal access to the center (school)'s education program or activity limited or denied by sex-based discrimination or harassment.

or other forms of discrimination or harassment.

These measures are provided to restore or preserve that person's access to the center (school)'s education program or activity after the center (school) determines that sex-based discrimination or harassment

or other forms of discrimination or harassment,

occurred.

General Reporting

A report of Title IX sex-based discrimination or harassment

or other forms of discrimination or harassment,

may be made using the Discrimination/**Harassment**/Bullying/Hazing/Dating Violence/Retaliation Report Form or by making a general report **orally** or in writing to the building administrator, or by using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's **oral** or written report. Upon receipt of a report, school staff **will** immediately notify the **Title IX Coordinator**.

A report may be made at any time, including during nonbusiness hours. **Oral** reports **will** be documented by the Title IX Coordinator or employee receiving the report using the Discrimination/**Harassment**/Bullying/Hazing/Dating Violence/Retaliation Report Form, and these procedures **will** be implemented appropriately.

A center (school) employee who suspects or is notified that a student may have been subject to conduct that constitutes a violation of Joint Operating Committee policy 103 will immediately report the incident to the Title IX Coordinator.

If the Title IX Coordinator is the subject of a complaint, reports should be made directly to the Administrative Director or designee.

All reports and complaints received by the building administrator **will** be promptly directed to the Title IX Coordinator, in accordance with Joint Operating Committee policy. The Title IX Coordinator **will** use the Discrimination/**Harassment**/Bullying/Hazing/Dating Violence/Retaliation Report Form to gather additional information from the reporter and/or other parties identified in the report.

The Title IX Coordinator **will** promptly contact the complainant regarding the report to gather additional information as necessary, and to discuss the availability of supportive measures. The Title IX Coordinator **will** consider the complainant's wishes with respect to supportive measures **and reasonable safety concerns**.

The Title IX Coordinator **will** initially assess whether the reported conduct:

1. Meets the definition of Title IX **sex-based discrimination or** harassment.

or other forms of discrimination or harassment.

2. Involves other Joint Operating Committee policies or the Code of Student Conduct.
3. Indicates, based on an individualized safety and risk analysis, that there is an immediate threat to the physical health or safety of an individual.
4. Involves a student identified as a student with a disability under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act. (Pol. 103.1, 113, **113.1, 113.2**)

If the result of this initial assessment determines that none of the allegations fall within the scope of Title IX **sex-based discrimination or** harassment,

or other forms of discrimination or harassment,

but the matter merits review and possible action under the Code of Student Conduct and other Joint Operating Committee policies or **complaint processes**, then the Title IX Coordinator **will** redirect the report to the appropriate administrator to address the allegations. (Pol. 103, 103.1, 113.1, 218, 247, 249, 252, 317, 317.1, **906**)

If the result of the initial assessment determines that the allegations may constitute Title IX **sex-based discrimination or** harassment,

or other forms of discrimination or harassment,

the Title IX Coordinator **will** promptly explain to the complainant the process for filing a complaint and inform the complainant of the continued availability of supportive measures with or without the filing of a complaint.

The Title IX Coordinator **will** contact the parents/guardians and provide them with information regarding the report and **the grievance procedures for filing a complaint**.

If the complainant/**reporter**, school staff or others with professional knowledge relating to the complainant's health and well-being indicate that notifying the parents/guardians could cause serious harm to the health or well-being of the complainant or other person(s), the Title IX Coordinator will determine, in consultation with such individuals, **including the Administrative**

Director, and upon advice of legal counsel, **and upon the request of law enforcement or child welfare agency**, whether to withhold or delay notification of the report from the complainant's parents/guardians.

Filing a Complaint

Individuals specified below may request that the center (school) investigate and make a determination about alleged conduct.

Sex-based discrimination, including sex-based harassment – **The following individuals may request that the center (school) investigate and make a determination about the alleged discrimination under Title IX:**

- 1. A complainant, which means:**
 - a. A center (school) student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or**
 - b. A person other than a center (school) student or employee who is alleged to have been subjected to conduct that could constitute sex-based discrimination under Title IX at a time when that individual was participating or attempting to participate in a center (school) education program or activity;**
- 2. A parent/guardian or other authorized legal representative with the legal right to act on behalf of the complainant; or**
- 3. The Title IX Coordinator, after conducting a fact-based assessment in accordance with law.**

Sex-Based Harassment - **Individuals themselves who are alleged to have been subjected to the sex-based harassment, those who have a legal right to act on behalf of such individual, or the Title IX Coordinator may initiate the complaint.**

Title IX Sex-Based Discrimination Other Than Sex-Based Harassment – **In addition to the individuals listed above, the following individuals have a right to make a complaint:**

- 1. Any center (school) student or employee; or**
- 2. Any person other than a student or employee who was participating or attempting to participate in a center (school) education program or activity at the time of the alleged sex discrimination.**

Other Forms of Discrimination – **A student who is alleged to have been subjected to conduct that could constitute discrimination or harassment, or a person other than a student or employee who is alleged to have been subjected to conduct that could constitute discrimination or harassment and who was participating or attempting to participate in a**

center (school) education program or activity at the time of the alleged discrimination or harassment.

Center (School) Actions

The measures identified below may be enforced by the center (school) at any time, as deemed necessary, including during the reporting, complaint or grievance procedures steps.

Supportive Measures –

The center (school) must offer and coordinate supportive measures, as appropriate. Supportive measures offered by the center (school) may not be imposed for punitive or disciplinary purposes.

For allegations of sex-based discrimination other than sex-based harassment or retaliation, the center (school)'s provision of supportive measures does not require the center (school), its employee or any other person authorized by the center (school) to provide an aid, benefit or service to alter the alleged discriminatory conduct for the purposes of providing a supportive measure.

For example, if a female student alleges sex-based discrimination due to the fact that she did not get enrolled in a tech ed class, the center (school) is not required to offer a supportive measure of allowing her into the class until a determination is made at the end of the grievance procedure. However, if a student were enrolled in the class and alleges sex-based harassment against the teacher, the center (school) would likely have to offer supportive measures to alter the alleged harassment such as limiting contact with the teacher or switching the student's class during the course of the grievance procedures.

The center (school) may, as appropriate, modify or terminate supportive measures at the conclusion of the grievance procedures or informal resolution process. The complainant or respondent may seek an appeal of decisions regarding supportive measures from an appropriate and impartial employee other than the employee who made the initial decision. The employee considering the appeal must have authority to modify or reverse the decision regarding supportive measures, and determine whether the decision to provide, deny, modify or terminate the supportive measure is inconsistent with the definition of supportive measures.

The center (school) will provide a party with the opportunity to seek modification or termination of supportive measures applicable to them if circumstances materially change.

When any party is an identified student with a disability, or thought to be a student with a disability, the Title IX Coordinator **will** notify the Director of Special Education and coordinate to determine whether additional steps must be taken as supportive measures for the party while the Title IX procedures are implemented.

Confidentiality –

Confidentiality regarding the supportive measures offered and the identity of the following individuals **will** be maintained, except as **necessary to provide the supportive measure or restore or preserve a party's access to a center (school) education program or activity, or as** permitted by law or regulations: (20 U.S.C. Sec. 1232g; 34 CFR Parts 99, 106; Pol. 113.3, 216)

1. Individuals making a report or complaint.
2. Complainant(s).
3. Respondent(s).
4. Witnesses.

Reasonable Accommodations –

Throughout the **grievance** procedures, the center (school) **will** make reasonable accommodations for identified physical and intellectual impairments that constitute disabilities for any party, and address barriers being experienced by disadvantaged students such as English learners and homeless students, consistent with the requirements of federal and state laws and regulations and Joint Operating Committee policy. (Pol. 103.1, 113, 138, 251)

Emergency Removal –

If the center (school) has determined, based on an individualized safety and risk analysis, that there is an **imminent and serious** threat to the **health** or safety of **a complainant or any students, employees or other persons** due to the allegations of Title IX **sex-based discrimination or** harassment, the respondent may be removed from the center (school)'s education program or activity or moved to an alternative setting, consistent with all rights under federal and state laws and regulations, and Joint Operating Committee policy, including but not limited to the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. If the respondent is an identified student with a disability, or thought to be disabled, the Title IX Coordinator **will** contact the Director of Special Education to coordinate the required actions in accordance with Joint Operating Committee policy.

When an emergency removal is warranted and it is not feasible to continue educational services remotely or in an alternative setting, the normal procedures for suspension and expulsion will be conducted to accomplish the removal, including specific provisions to address a student with a disability where applicable. (Pol. 113.1, 113.2, 233)

The respondent **will** be provided with notice and provided an opportunity for due process **to challenge the emergency removal immediately following the removal**, in accordance with law, regulations and Joint Operating Committee policy. When expulsion is necessary because

continuation of educational services is not feasible, the Joint Operating Committee's written adjudication of expulsion **will** address the pending Title IX process and the impact of the outcome of the Title IX process on a student's emergency removal status. (20 U.S.C. Sec. 1400 et seq.; 29 U.S.C. Sec. 794 ; 42 U.S.C. Sec. 12101 et seq.; 34 CFR 106.44 ; Pol. 103.1, 113.1, 233)

Administrative Leave -

When an employee, based on an individualized safety and risk analysis, poses an **imminent and serious** threat to the health or safety of any student or other individual, the employee may be removed on an emergency basis. **The employee will be provided with notice and an opportunity to challenge the emergency removal immediately following the removal.**

An accused nonstudent center (school) employee may be placed on administrative leave during the pendency of the grievance **procedures**, consistent with all rights under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, and in accordance with state law and regulations, Joint Operating Committee policy and an applicable collective bargaining agreement or individual contract. (29 U.S.C. Sec. 794, 42 U.S.C. Sec. 12101 et seq., 34 CFR 106.44, Pol. 317)

Required Reporting Under Other Policies -

In addition to implementing the Title IX **grievance** procedures, the Title IX Coordinator **will** ensure that reported conduct which meets the definition of other laws, regulations or Joint Operating Committee policies, is also appropriately addressed in accordance with the applicable laws, regulations **and** Joint Operating Committee policies, including but not limited to, incidents under the **school safety and security provisions of the PA School Code**, reports of educator misconduct, threats or reports of suspected child abuse. (Pol. 218, **218.3, 236.1, 317.1, 805.1, 806, 824**)

Timeframes

Reasonably prompt timeframes **will** be established for the conclusion of the grievance **procedures**, including timeframes for the **evaluation, investigation, determination and** informal resolution process and timeframes for filing and resolving appeals.

The established timeframes may be adjusted to allow for a limited extension of time for good cause. Written notice of the delay or extension and the reason for such action **will** be provided to the complainant and the respondent, and documented with the records of the complaint. Good cause may include, but is not limited to, considerations such as:

1. The absence of a party or a witness.
2. **Request from law enforcement or child welfare agency.**
3. Need for language assistance or accommodation of disabilities.

Dismissal of Complaints

Complaints may be dismissed, if at any time during the investigation or **determination**:

1. **The center (school) is unable to identify the respondent after taking reasonable steps to do so.**
2. A complainant provides **voluntary** written notification of withdrawal of any **or all** allegations **in** the complaint, **the Title IX Coordinator declines to initiate a complaint, and the center (school) determines that, without the complainant's withdrawn allegations, the alleged conduct that remains in the complaint, if any, would not constitute sex-based discrimination,**

or other forms of discrimination,

even if proven.
3. **After the center (school) makes reasonable efforts to clarify the allegations with the complainant, the center (school) determines that the alleged conduct, even if proven, would not constitute sex-based discrimination or harassment.**

or other forms of discrimination or harassment.
4. The respondent is **not participating in a center (school) education program or activity or** employed by the center (school).

Upon dismissal, the center (school) will promptly notify the complainant, in writing, of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, the center (school) will also promptly notify the respondent, in writing, of the dismissal and the basis for the dismissal, either following notification to the complainant or simultaneously.

Written notification **will** state whether the allegations will continue to be addressed pursuant to the Code of Student Conduct and other Joint Operating Committee policies or **complaint processes.**

When a complaint is dismissed, the center (school) will, at a minimum:

1. **Offer supportive measures to the complainant and respondent, as appropriate.**
2. **Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that the conduct does not continue or recur within the center (school)'s education program or activity.**

Appeals of Dismissal -

The center (school) will notify the complainant and respondent, if the respondent has already been notified of the allegations, that the dismissal may be appealed on the following bases:

- 1. Procedural irregularity that would change the outcome of the matter.**
- 2. New evidence that would change the outcome and that was not reasonably available when the dismissal decision was made.**
- 3. The Title IX Coordinator, investigator or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.**

Written notice of a party's appeal must be submitted to the Title IX Coordinator within

ten (10) school days

after the date the determination is provided to the parties. Notice of appeal must include a brief statement describing the basis for the appeal.

If the dismissal is appealed, the center (school) will:

- 1. Notify the parties of any appeal, including notice of the allegation, if notice was not previously provided to the respondent;**
- 2. Implement the appeal procedures equally for the parties;**
- 3. Ensure that the decision-maker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;**
- 4. Ensure that the decision-maker for the appeal has been appropriately trained;**
- 5. Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and**
- 6. Notify the parties of the appeal and the rationale for the result.**

The center (school) will notify the parties of the rationale for the result of the appeal within

twenty (20) school days.

Consolidation of Complaints

The center (school) may consolidate **complaints** against more than one (1) respondent, or by more than one (1) complainant against one or more respondents, or by one (1) individual against another individual, where the allegations of **sex-based discrimination or harassment**

or other forms of discrimination or harassment

arise out of the same facts or circumstances.

Complaint

The center (school) is required to initiate the grievance **procedures in this document** when a complainant or the complainant's parent/guardian **or other authorized legal representative** files a **complaint based on Title IX sex-based discrimination or harassment.**

or other forms of discrimination or harassment.

The Title IX Coordinator is also authorized to initiate this process despite a complainant's wishes when actions limited to supportive measures are not a sufficient response to alleged behavior, or when **the grievance procedures are** necessary to investigate and address the situation adequately. For example, if disciplinary action would be warranted if allegations are true, if the respondent is an employee, or if further investigation is needed to assess the extent of the behavior and impact on others, it may be clearly unreasonable not to initiate the **grievance procedures**. Only the Title IX Coordinator is authorized to initiate the **grievance procedures** despite a complainant's wishes, but the Title IX Coordinator may consult with the school solicitor and other center (school) officials in making this decision. **The Title IX Coordinator's assessment of whether to initiate the grievance procedures despite the complainant's wishes must be fact-specific and address the considerations outlined in the Discrimination/Harassment/Bullying/Hazing/Dating Violence/Retaliation Report Form.**

The complainant or the Title IX Coordinator **will** use the designated section of the Discrimination/**Harassment**/Bullying/Hazing/Dating Violence/Retaliation Report Form to file or sign a complaint.

The Title IX Coordinator **will** assess whether the investigation should be conducted by the building administrator, another center (school) employee, the Title IX Coordinator or an attorney and **will** promptly assign the investigation to that individual.

The Title IX Coordinator, investigator, decision-maker, or any individual designated to facilitate the informal resolution process, each must have completed the required training for such roles as designated in Joint Operating Committee policy and **must** not have a conflict of interest or bias

for or against an individual complainant or respondent, or for or against complainants or respondents in general.

The respondent **will** be presumed not responsible for the alleged conduct until a determination regarding responsibility has been made at the conclusion of the grievance **procedures**.

Notice Requirements -

Upon receipt of a complaint, or when the Title IX Coordinator signs a complaint to initiate the grievance **procedures**, the Title IX Coordinator **will** provide written notice to all known parties, and the parents/guardians **or other authorized legal representatives** of known parties, where applicable, providing the following information:

1. Notice of the center (school)'s grievance **procedures** and any informal resolution process that may be available.
2. Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
 - a. The identity of the parties involved, if known.
 - b. The conduct allegedly constituting **sex-based discrimination or harassment or other forms of discrimination or harassment**.
 - c. The date and location of the alleged incident(s), if known.
3. **A statement that retaliation is prohibited.**
4. **A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence, upon request.**
5. A statement that a **determination** regarding responsibility **will** be made at the conclusion of the grievance **procedures** and, until that time, the respondent is presumed not responsible for the alleged conduct.
6. Notice that Joint Operating Committee policy and the center (school)'s Code of Student Conduct prohibits knowingly making false statements or knowingly submitting false information to school officials in connection with reports of misconduct or discrimination complaints.

The center (school) will not discipline a party, witness or other individual participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on a determination of whether sex-based discrimination or harassment occurred.

7. Notice to all known parties of any additional allegations that the center (school) decides to investigate during the course of the investigation.

Informal Resolution Process

[Note: The informal resolution process cannot be offered or used to facilitate a resolution for any complaint where the allegations state that an employee engaged in sex-based harassment of a student, or if the process would conflict with federal, state or local law.]

At any time after a complaint has been filed, but prior to reaching a determination of responsibility, if the Title IX Coordinator believes the circumstances are appropriate, the Title IX Coordinator may offer the parties the opportunity to participate in an informal resolution process, which does not involve a full investigation and adjudication of the complaint.

The center (school) may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of complaints. Similarly, a center (school) may not require **or pressure** the parties to participate in an informal resolution process.

Informal resolutions can take many forms, depending on the particular case. Examples include, but are not limited to, mediation, facilitated discussions between the parties, restorative practices, acknowledgment of responsibility by a respondent, apologies, a requirement to engage in specific services or supportive measures.

The facilitator for the informal resolution process must not be the same person as the investigator or the decision-maker in the grievance procedures, must have received the required training in accordance with Joint Operating Committee policy and must not have a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent.

When offering an informal resolution process, the Title IX Coordinator **will**:

1. Provide the parties a written notice disclosing the following:
 - a. The allegations.
 - b. The requirements of the informal resolution process, including that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance **procedures**.
 - c. **That the parties' agreement to a resolution at the conclusion of the informal resolution process precludes the parties from initiating or resuming grievance procedures arising from the same allegations.**
 - d. **The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only**

on the parties. Other terms of an informal resolution agreement may include restrictions on contact and restrictions on the respondent's participation in one or more of the center (school)'s programs or activities or attendance at specific events, including restrictions the center (school) could have imposed as remedies or disciplinary sanctions had the center (school) determined at the end of the grievance procedures the alleged conduct occurred.

- e. Any consequences resulting from participating in the informal resolution process, including the records **and information** that will be maintained **and whether and how such records and information** could be shared.
2. Obtain the parties' voluntary, written consent to the informal resolution process. As part of the consent process, all parties **will** be informed of the rights being waived by agreeing to the informal resolution process, and **will** acknowledge such agreement in writing.
3. The informal resolution process **will** be conducted within

twenty (20) school days

of the parties' signed agreement for the informal resolution process.

If the matter is resolved to the satisfaction of the parties, the center (school) employee facilitating the informal resolution process **will** document the nature of the complaint and the proposed resolution of the matter, have both parties sign the documentation and receive a copy, and forward it to the Title IX Coordinator. Within

twenty (20) school days

after the complaint is resolved in this manner, the Title IX Coordinator **will** contact the complainant to determine if the resolution was effective and to monitor the agreed upon remedies. The Title IX Coordinator **will** document the informal resolution process, responses from all parties, and an explanation of why the center (school)'s response was not deliberately indifferent to the reported complaint of **sex-based discrimination or harassment.**

or other forms of discrimination or harassment.

***If the Informal Resolution Process results in the final resolution of the complaint, the following steps are not required.**

GRIEVANCE PROCEDURES

Investigation

The center (school) must provide an adequate, reliable and impartial investigation of complaints.

The designated investigator, if other than the Title IX Coordinator, **will** work with the Title IX Coordinator to assess the scope of the investigation, who needs to be interviewed and what records or evidence may be relevant to the investigation, **and to document the evidence throughout each stage of the investigation.**

When investigating a complaint, the investigator **will**:

1. Bear the burden of proof and gather evidence and conduct interviews sufficient to reach a **determination**. During the process of gathering evidence, unless the center (school) obtains the voluntary, written consent of the party, or the party's parent/guardian **or other authorized legal representative** when legally required, the center (school) cannot access, consider, disclose or otherwise use a party's records which are protected by legal privilege, such as those records 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 providing treatment to the party. (Pol. 113.3, 207, 209, 216, Safe2Say Something Procedures)
2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence **that is relevant and not otherwise impermissible.**
3. Objectively evaluate all evidence **gathered through the investigation**, including inculpatory and exculpatory evidence, **and determine what evidence is relevant and what evidence is impermissible regardless of relevance. When the initial complaint involves allegations relating to conduct which took place away from school property, school-sponsored activities or school conveyances, the investigation may include inquiries related to these allegations to determine whether they resulted in continuing effects such as sex-based discrimination or harassment**

or other discrimination or harassment

in school settings.
4. **Inform all parties, parents/guardians and witnesses of the requirements for confidentiality and prohibition against retaliation for anyone's participation in the investigation process, and that conduct believed to be retaliatory should be reported to the Title IX Coordinator.**

5. **Provide each party with an equal opportunity to access the evidence that is relevant to the allegations and not otherwise impermissible, in the following manner:**
 - a. **Provide each party with an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence. If the center (school) provides a description of the evidence, the center (school) must further provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party;**
 - b. **The center (school) must provide a reasonable opportunity to respond to the evidence or to the accurate description of the evidence; and**
 - c. **The center (school) must take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. For purposes of this paragraph, disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint are authorized.**
6. **During the investigation the parties and witnesses will be questioned to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more of the allegations. Where the investigator has interviewed a party or witness and the investigator is also serving as the decision-maker, credibility evaluation is inherent in the process of conducting the interview. In situations where credibility determinations are required from a decision-maker who did not interview a party or witness, the Title IX Coordinator will facilitate an opportunity for the decision-maker to conduct an interview as part of the decision-maker's process of engaging with the evidence resulting from the investigation. In considering evidence, the decision-maker will ensure credibility determinations are not based on an individual's status as a complainant, respondent or witness.**

If at any point the investigation expands to include additional allegations that were not included in the initial notice **of allegations**, the investigator **will** alert the Title IX Coordinator. The Title IX Coordinator **will** provide written notice of the new allegations to the known parties.

If the investigation reveals that the conduct being investigated may involve a violation of criminal law, the investigator **will** promptly notify the Title IX Coordinator, who **will** promptly inform law enforcement authorities about the allegations and make any additional required reports, in accordance with law, regulations and Joint Operating Committee policy. (Pol. 218, 317.1, **805.1**, 806)

The obligation to conduct this investigation **will** not be negated by the fact that a criminal or child protective services investigation of the allegations is pending or has been concluded. The investigator should coordinate with any other ongoing investigations of the allegations, including agreeing to request for a delay in fulfilling the center (school)'s investigative responsibilities during the fact-finding portion of a criminal or child protective services investigation. Such delays **will** not extend beyond the time necessary to prevent interference with or disruption of the

criminal or child protective services investigation and the reason for such delay **will** be documented by the investigator.

In the course of an investigation, it is possible that conduct other than, or in addition to, Title IX **sex-based discrimination or harassment**

or other discrimination or harassment,

may be identified as part of the same incident or set of circumstances. The fact that there may be Title IX **sex-based discrimination or harassment**

or other discrimination or harassment,

involved does not preclude the center (school) from addressing other identified violations of the Code of Student Conduct or Joint Operating Committee policy. If such other conduct is being investigated and addressed together **as part of the grievance procedures**, disciplinary action normally should not be imposed until the completion of the **grievance procedures**. A decision whether and when to take such action should be made in consultation with the school solicitor.

The investigation stage **will** be concluded within

thirty (30) school days.

Determination and Center (School) Action

The center (school) will designate a decision-maker, who may be the same person as the Title IX Coordinator or investigator. The decision-maker must be free from any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and must have received training in accordance with Joint Operating Committee policy.

Following the investigation and evaluation of all relevant and not otherwise impermissible evidence, the decision-maker must issue a determination for the alleged conduct. To reach this determination, the decision-maker will apply the preponderance of the evidence standard, meaning that the party bearing the burden of proof must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not. This standard requires the decision-maker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness; if the decision-maker is not persuaded under the preponderance of the evidence standard that the alleged conduct occurred, whatever the quantity of the evidence is, the decision-maker must not determine that the alleged conduct occurred.

The center (school) will provide written notification to the parties of the determination as to whether the alleged conduct occurred, including the rationale for the determination and the procedures and permissible bases for the appeal, if applicable.

If there is a determination that the alleged conduct occurred, as appropriate, the Title IX Coordinator is required to:

- 1. Coordinate the provision and implementation of remedies to a complainant and other persons the center (school) identifies as having had equal access to the center (school)'s education program or activity limited or denied by such conduct.**
- 2. Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any disciplinary sanctions, in accordance with applicable law, regulations and Joint Operating Committee policy. (Pol. 113.1, 216, 324)**
- 3. Take other appropriate prompt and effective steps to ensure that the conduct does not continue or recur within the center (school)'s education program or activity.**

Appeal Process

The center (school) must offer both parties the right to appeal a determination of responsibility or any allegation in the complaint. The appeal may be based on the following:

- 1. Procedural irregularity that would change the outcome of the matter.**
- 2. New evidence that is not otherwise impermissible that would change the outcome and that was not reasonably available when the decision was made.**
- 3. The Title IX Coordinator, investigator or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.**

Written notice of a party's appeal **must** be submitted to the Title IX Coordinator within

five (5) school days

after the date **the determination is provided to the parties**. Notice of appeal **must** include a brief statement describing the basis for the appeal.

If the determination is appealed, the center (school) will:

- 1. Notify the parties of any appeal;**
- 2. Implement the appeal procedures equally for the parties;**

3. **Ensure that the decision-maker for the appeal did not take part in the investigation of the allegations of the complaint;**
4. **Ensure that the decision-maker for the appeal has been appropriately trained; and**
5. **Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome.**

The decision-maker for the appeal will review the investigation and may also conduct or designate another person to conduct a reasonable supplemental investigation to assess the sufficiency and propriety of the prior investigation.

The center (school) will notify the parties of the rationale for the result of the appeal within twenty (20) school days.

Disciplinary Action

Following the issuance of the determination and any applicable appeal, any disciplinary action specified in the determination or appeal decision must be consistent with the Code of Student Conduct, Joint Operating Committee policies and administrative regulations, center (school) procedures, applicable collective bargaining agreements and state and federal laws and regulations, including specific requirements and provisions for students with disabilities. (Pol. 113.1, 113.2, 218, 233, 317, 317.1)

The center (school) will not discipline a party, witness or other individual participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on a determination of whether sex-based discrimination or harassment occurred.

Recordkeeping

The center (school) **must** maintain the following records for a minimum of seven (7) years after conclusion of procedures and implementation of disciplinary sanctions and/or remedies, or in the case of a complainant or respondent who is a minor, until the expiration of the longest statute of limitations for filing a civil suit applicable to any allegation:

1. **Each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex-based discrimination or harassment, or other forms of discrimination or harassment, including required notifications.**

2. **Each investigation**, including any **determination** and disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the center (school)'s education program or activity.
3. Any appeal and the result.
4. Any informal resolution and the result.
5. All materials used to **provide the required training**.
6. Records of any center (school) actions, including any supportive measures, taken in response to a report or complaint. In each instance, the center (school) **will** document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the center (school)'s education program or activity. If a center (school) does not provide a complainant with supportive measures, then the center (school) must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the center (school) in the future from providing additional explanations or detailing additional measures taken.