TITLE IX SEXUAL HARASSMENT PROCEDURES AND GRIEVANCE PROCESS FOR FORMAL COMPLAINTS

The Title IX sexual harassment procedures and grievance process for formal complaints prescribed in this attachment apply only when a report includes allegations of sexual harassment subject to Title IX regulations. (34 CFR 106.44, 106.45)

All other reports or complaints of discrimination or retaliation shall follow the complaint procedures established in Policy 103 Attachment 2 regarding discrimination.

Definitions

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the center's Title IX Coordinator or any center official who has the authority to institute corrective measures on behalf of the center, or to any employee of a secondary school, other than the respondent.

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.

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging Title IX sexual harassment and requesting that the center investigate the allegation. The authority for the Title IX Coordinator to sign a formal complaint does not make the Title IX Coordinator the complainant or other party during the grievance process. The phrase "**document filed by a complainant**" refers to a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

Retaliation shall mean actions including, but not limited to, intimidation, threats, coercion, or discrimination against a victim or other person because they report conduct that may constitute discrimination or harassment, including Title IX sexual harassment, in accordance with Joint Operating Committee policy and procedures, participate in an investigation or other process addressing discrimination or Title IX sexual harassment, or act in opposition to discriminatory practices.

The following actions shall not constitute retaliation:

1. An individual exercising free speech under the rights protected by the First Amendment.

2. The assignment of consequences consistent with Joint Operating Committee policy and the Code of Student Conduct when an individual knowingly makes a materially false statement in bad faith in an investigation. The fact that the charges of discrimination were unfounded or unsubstantiated shall not be the sole reason to conclude that any party made a materially false statement in bad faith.

Supportive measures mean nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

Supportive measures shall be designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or to deter sexual harassment. Supportive measures may include, but are not limited to:

1. Counseling.

2. Extensions of deadlines or other course-related adjustments.

3. Modifications of work or class schedules.

4. Campus escort services.

5. Mutual restrictions on contact between the parties.

6. Changes in work or housing locations.

7. Leaves of absence.

8. Increased security.

9. Monitoring of certain areas of the campus.

10. Assistance from domestic violence or rape crisis programs.

11. Assistance from community health resources including counseling resources.

Supportive measures may also include assessments or evaluations to determine eligibility for special education or related services, or the need to review an Individualized Education Program (IEP) or Section 504 Service Agreement based on a student's behavior. This could include, but is not limited to, a manifestation determination or functional behavioral assessment (FBA), in accordance with applicable law, regulations or Joint Operating Committee policy. (Pol. 103.1, 113, 113.1, 113.2)

Title IX sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. A center employee conditioning the provision of an aid, benefit, or center service on an individual's participation in unwelcome sexual conduct, commonly referred to as *quid pro quo sexual harassment.*

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 a center education program or activity.

3. Sexual assault, dating violence, domestic violence or stalking.

   a. **Dating Violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship is determined by the following factors:

      1) Length of relationship.

      2) Type of relationship.

      3) Frequency of interaction between the persons involved in the relationship.

   b. **Domestic violence** 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 domestic or family violence laws of the jurisdiction receiving federal funding, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

   c. **Sexual assault** means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
   d. **Stalking,** under Title IX means stalking on the basis of sex, for example when the stalker desires to date a victim. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to either:

      1) Fear for their safety or the safety of others.

      2) Suffer substantial emotional distress.

Such conduct must have taken place during a center education program or activity and against a person in the United States to qualify as sexual harassment subject to Title IX regulations. An **education program or activity** includes the locations, events or circumstances over which the center exercises substantial control over both the respondent and the context in which the harassment occurs.

TITLE IX SEXUAL HARASSMENT PROCEDURES

General Response – (with or without a formal complaint)

Any person, whether the alleged victim or not, may report Title IX sexual harassment using the Discrimination/Sexual Harassment/Bullying/Hazing/Dating Violence/Retaliation Report Form or by making a general report verbally 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 verbal or written report. Upon receipt of a report, school staff shall immediately notify the building administrator.

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

Center staff who become aware of bullying, hazing, harassment or other discrimination affecting a student or staff member shall promptly report it to the building administrator.

Parents/Guardians of students have the right to act on behalf of the complainant, the respondent, or other individual at any time.

When the center has actual knowledge of Title IX sexual harassment, the center is required to respond promptly and in a manner that is not deliberately indifferent, meaning not clearly unreasonable in light of the known circumstances.

All sexual harassment reports and complaints received by the building administrator shall be promptly directed to the Title IX Coordinator, in accordance with Joint Operating Committee policy. The Title IX Coordinator shall use the Discrimination/Sexual Harassment/Bullying/Hazing/Dating Violence/Retaliation Report Form to gather additional information from the reporter and/or other parties identified in the report, to determine if the allegations meet the definition and parameters for Title IX sexual harassment.

The Title IX Coordinator shall 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 shall consider the complainant's wishes with respect to supportive measures.

The Title IX Coordinator shall initially assess whether the reported conduct:

1. Meets the definition of Title IX sexual harassment.

2. Occurred in a center program or activity under the control of the center and against a person in the United States.

3. Involves other Joint Operating Committee policies or the Code of Student Conduct.

4. Indicates, based on an individualized safety and risk analysis, that there is an immediate threat to the physical health or safety of an individual.

5. 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)

If the result of this initial assessment determines that none of the allegations fall within the scope of Title IX sexual harassment, but the matter merits review and possible action under the Code of Student Conduct and other Joint Operating Committee policies or Attachment 2 addressing Discrimination Complaints, then the Title IX Coordinator shall redirect the report to the appropriate administrator to address the allegations. (Pol. 103, 103.1, 113.1, 218, 247, 249, 252, 317, 317.1)

If the result of the initial assessment determines that the allegations may constitute Title IX sexual harassment, the Title IX Coordinator shall promptly explain to the complainant the process for filing a formal complaint and inform the complainant of the continued availability of supportive measures with or without the filing of a formal complaint.

The Title IX Coordinator shall contact the parents/guardians and provide them with information regarding the report and Title IX sexual harassment procedures and grievance process for formal complaints.

If the complainant, 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 and upon advice of legal counsel, whether to withhold or delay notification of the report from the complainant's parents/guardians.
The Title IX Coordinator shall also determine what supportive measures may be offered to the respondent.

If either party is an identified student with a disability, or thought to be disabled, the Title IX Coordinator shall contact the participating school district Director of Special Education to coordinate the required actions in accordance with Joint Operating Committee policy. (Pol. 113, 113.1, 113.2)

Confidentiality regarding the supportive measures offered and the identity of the following individuals shall be maintained, except as may be permitted by law or regulations relating to the conduct of any investigation or hearing, if applicable: (20 U.S.C. Sec. 1232g; 34 CFR Parts 99, 106; Pol. 113.3, 216)

1. Individuals making a report or formal complaint.

2. Complainant(s).

3. Respondent(s).

4. Witnesses.

The center shall treat complainants and respondents equitably by:

1. Offering supportive measures to the complainant and may offer such measures to the respondent.

2. Following the grievance process for formal complaints before imposing disciplinary sanctions or other actions that are not supportive measures on the respondent.

Disciplinary Procedures When Reports Allege Title IX Sexual Harassment -

When reports allege Title IX sexual harassment, disciplinary sanctions may not be imposed until the completion of the grievance process for formal complaints. The center shall presume that the respondent is not responsible for the alleged conduct until a determination has been made at the completion of the grievance process for formal complaints.

When an emergency removal, as described below, is warranted to address an immediate threat to the physical health or safety of an individual, and it is not feasible to continue educational services remotely or in an alternative setting, the normal procedures for suspension and expulsion shall be conducted to accomplish the removal, including specific provisions to address a student with a disability where applicable. (Pol. 113.1, 113.2, 233)

When an emergency removal is not required, disciplinary sanctions will be considered in the course of the Title IX grievance process for formal complaints. Following the issuance of the written determination and any applicable appeal, any disciplinary action specified in the written determination or appeal decision shall be implemented in accordance with the normal procedures for suspensions, expulsions or other disciplinary actions, including specific provisions to address a student with a disability where applicable. (Pol. 113.1, 113.2, 218, 233)

Supportive Measures -

All supportive measures provided by the center shall remain confidential, to the extent that maintaining such confidentiality would not impair the ability of the center to provide the supportive measures. (34 CFR 106.44)

When any party is an identified student with a disability, or thought to be a student with a disability, the Title IX Coordinator shall notify the participating school district 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. Such measures may include, but are not limited to, conducting a manifestation determination, FBA or other assessment or evaluation, in accordance with applicable law, regulations or Joint Operating Committee policy, and in coordination with the student's school district of residence where applicable. FBAs must be conducted when a student's behavior interferes with the student's learning or the learning of others and information is necessary to provide appropriate educational programming, and when a student's behavior violates the Code of Student Conduct and is determined to be a manifestation of a student's disability. (Pol. 113, 113.1, 113.2)

Reasonable Accommodations –

Throughout the Title IX sexual harassment procedures, the center shall 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, 832)

Emergency Removal –

If the center has determined, based on an individualized safety and risk analysis, that there is an immediate threat to the physical health or safety of any student or other individual due to the allegations of Title IX sexual harassment, the respondent may be removed from the center'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 shall contact the participating school district Director of Special Education to coordinate the required actions in accordance with Joint Operating Committee policy. The respondent shall be provided with notice and provided an opportunity for due process, 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 shall 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 immediate threat to the health or safety of any student or other individual, the employee may be removed on an emergency basis.

An accused nonstudent center employee may be placed on administrative leave during the pendency of the grievance process for formal complaints, 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 sexual harassment procedures, the Title IX Coordinator shall 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 or Joint Operating Committee policies, including but not limited to, incidents under the Safe Schools Act, reports of educator misconduct, threats, or reports of suspected child abuse. (Pol. 218, 317.1, 806, 824)

Timeframes

Reasonably prompt timeframes shall be established for the conclusion of the grievance process for formal complaints, including timeframes for the informal resolution process and timeframes for filing and resolving appeals.

The established timeframes included in these procedures may be adjusted to allow for a temporary delay or a limited extension of time for good cause. Written notice of the delay or extension and the reason for such action shall 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, a party's advisor or a witness.

2. Concurrent law enforcement activity.

3. Need for language assistance or accommodation of disabilities.

Redirection or Dismissal of Title IX Formal Complaints

Formal complaints may be dismissed, if at any time during the investigation, hearing process (if applicable) or written determination steps described below:

1. A complainant provides written notification of withdrawal of any allegations or of the formal complaint.

2. The respondent is no longer enrolled or employed by the center in a center program or activity.

3. Specific circumstances prevent the center from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.

Only alleged conduct that occurred in the center's education program or activity, and against a person in the United States, may qualify as Title IX sexual harassment within the center's jurisdiction. If it is determined during the investigation or written determination steps below that none of the allegations, if true, would meet the definition and parameters of Title IX sexual harassment within the center's jurisdiction, the Title IX Coordinator shall dismiss the formal complaint under Title IX. If the matter merits review and possible action under the Code of Student Conduct and other Joint Operating Committee policies or Attachment 2 addressing Discrimination Complaints, then the Title IX Coordinator shall redirect the report to the appropriate administrator to address the allegations.

Written notification shall be promptly issued to the parties simultaneously of any allegations found not to qualify or that are dismissed in compliance with Title IX. Written notification shall state whether the allegations will continue to be addressed pursuant to the Code of Student Conduct and other Joint Operating Committee policies or Attachment 2 addressing Discrimination Complaints.

A dismissal may be appealed via the appeal procedures set forth in this Attachment.

Consolidation of Title IX Formal Complaints

The center may consolidate formal 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 sexual harassment arise out of the same facts or circumstances.

GRIEVANCE PROCESS FOR FORMAL COMPLAINTS

Step 1 – Formal Complaint

The center is required to initiate the grievance process for formal complaints when a complainant or the complainant's parent/guardian files a formal complaint. 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 a formal complaint process is 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 formal complaint process. Only the Title IX Coordinator is authorized to initiate the formal complaint process 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 complainant or the Title IX Coordinator shall use the designated section of the Discrimination/Sexual Harassment/Bullying/Hazing/Dating Violence/Retaliation Report Form to file or sign a formal complaint.

The Title IX Coordinator shall assess whether the investigation should be conducted by the building administrator, another center employee, the Title IX Coordinator or an attorney and shall 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 shall 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 shall be presumed not responsible for the alleged conduct until a written determination regarding responsibility has been made at the conclusion of the grievance process for formal complaints.

Notice Requirements -

Upon receipt of a formal complaint, or when the Title IX Coordinator signs a formal complaint to initiate the grievance process for formal complaints, the Title IX Coordinator shall provide written notice to all known parties, and the parents/guardians of known parties, where applicable, providing the following information:

1. Notice of the center's grievance process for formal complaints and any informal resolution process that may be available.

2. Notice of the allegations potentially constituting Title IX sexual harassment, 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 sexual harassment.

    c. The date and location of the alleged incident(s), if known.

3. A statement that a written determination regarding responsibility shall be made at the conclusion of the grievance process for formal complaints and, until that time, the respondent is presumed not responsible for the alleged conduct.

4. Notice that parties may have an advisor of their choice, who may be, but is not required to be, an attorney. The advisor may inspect and review evidence.

5. Notice that Joint Operating Committee policy and the center's Code of Student Conduct prohibits knowingly making false statements or knowingly submitting false information to center officials in connection with reports of misconduct or discrimination complaints.

6. Notice to all known parties of any additional allegations that the center decides to investigate during the course of the investigation.

Step 2 – Informal Resolution Process

[Note: The informal resolution process cannot be offered or used to facilitate a resolution for any formal complaint where the allegations state that an employee sexually harassed a student.]

At any time after a formal 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 Title IX sexual harassment complaint.

The center 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 formal Title IX sexual harassment complaints. Similarly, a center may not require 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.

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

1. Provide the parties a written notice disclosing the following:

    a. The allegations.

    b. The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; provided, however, 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 process for formal complaints.

    c. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

2. Obtain the parties' voluntary, written consent to the informal resolution process. As part of the consent process, all parties shall be informed of the rights being waived by agreeing to the informal resolution process and shall acknowledge such agreement in writing.

3. The informal resolution process shall 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 shall 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 shall contact the complainant to determine if the resolution was effective and to monitor the agreed upon remedies. The Title IX Coordinator shall document the informal resolution process, responses from all parties, and an explanation of why the center's response was not deliberately indifferent to the reported complaint of sexual harassment.

***If Step 2 Informal Resolution Process results in the final resolution of the complaint, the following steps are not applicable.**

Step 3 – Investigation

The designated investigator, if other than the Title IX Coordinator, shall 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. The investigation stage shall be concluded within thirty (30) school days. When investigating a formal complaint, the investigator shall:

1. Bear the burden of proof and gather evidence and conduct interviews sufficient to reach a written determination. During the process of gathering evidence, unless the center obtains the voluntary, written consent of the party, or the party's parent/guardian when legally required, the center 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. Objectively evaluate all available evidence, including inculpatory and exculpatory evidence.

3. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

4. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. However the center may request a nondisclosure agreement be signed by the parties and their advisor(s), if any, stating that they will not disseminate or disclose evidence and documents exchanged in the investigation.

5. Provide the parties with the same opportunities to have others present during any interview or other meeting, including an advisor of the party's choice. The center may establish restrictions, applicable to both parties, regarding the extent to which the advisor may participate.

6. Provide written notice to any party whose participation is invited or expected during the investigation process with the following information, in sufficient time for the party to prepare to participate:

    a. Date.

    b. Time.

    c. Location.

d. Participants.

e. Purpose of all investigative interviews, other meetings or hearings, if applicable.

7. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations, including evidence the center does not intend to rely on to reach a determination regarding responsibility and any inculpatory and exculpatory evidence, whether obtained from a party or other source.

If at any point the investigation expands to include additional allegations that were not included in the initial notice provided upon initiation of the grievance process for formal complaints, the investigator shall alert the Title IX Coordinator. The Title IX Coordinator shall provide written notice of the new allegations to the known parties.

Prior to the completion of the investigative report, the investigator shall:

1. Send to each party and the party's advisor, if any, the evidence subject to inspection and review in electronic or hard copy format.

2. Provide the parties at least ten (10) school days following receipt of the evidence to submit a written response.

3. Consider the written response prior to drafting the investigative report.

The investigator shall draft an investigative report that fairly summarizes relevant evidence and shall provide the investigative report to all parties and to the designated decision-maker, at least ten (10) school days prior to a hearing, if applicable.

If the investigation reveals that the conduct being investigated may involve a violation of criminal law, the investigator shall promptly notify the Title IX Coordinator, who shall 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, 806)

The obligation to conduct this investigation shall 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's investigative responsibilities during the fact-finding portion of a criminal or child protective services investigation. Such delays shall 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 shall be documented by the investigator.

In the course of an investigation, it is possible that conduct other than, or in addition to, Title IX sexual harassment may be identified as part of the same incident or set of circumstances, The fact that there may be Title IX sexual harassment involved does not preclude the center 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 with Title IX sexual harassment as part of the Title IX grievance process for formal complaints, disciplinary action normally should not be imposed until the completion of the Title IX grievance process for formal complaints. A decision whether and when to take such action should be made in consultation with the school solicitor.

Step 4 – Written Determination and Center Action

Designation of Decision-Maker -

To avoid any conflict of interest or bias, the decision-maker cannot be the same person as the Title IX Coordinator or the investigator. The responsibility as the decision-maker for complaints of Title IX sexual harassment shall generally be designated to the center's business manager or an outside hearing officer.

If the business manager has a conflict of interest or is a party in the formal complaint process, they shall disclose the conflict and the Title IX Coordinator shall designate another individual to serve as the decision-maker.

Formal Complaint Process Live Hearing

The center shall provide a live hearing as part of a formal complaint process involving an adult student who is a complainant or respondent. The live hearing shall be conducted by the individual designated as the decision-maker for the formal complaint.

A live hearing shall be conducted at least ten (10) school days after the investigator completes the investigative report and provides it to all parties. Each party may refer to evidence from the investigative report during the hearing, including for purposes of cross-examination.

If a party does not have an advisor present for the live hearing, the center shall provide an advisor of the center's choice to conduct cross-examination on behalf of that party. The advisor may be, but is not required to be, an attorney, and the center shall not charge a fee for providing the advisor.

At the live hearing, the decision-maker shall permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including questions challenging credibility.

At the request of either party, the center shall conduct the live hearing with the parties located in separate rooms, with technology enabling the decision-maker and parties to simultaneously see and hear the party or the witness answering questions.

Cross-examination shall be conducted directly, orally and in real time by the party's advisor of choice and never by a party personally, notwithstanding the center's discretion to restrict the extent to which advisors may participate in proceedings of the formal complaint process.

Only relevant cross-examination and other questions may be asked of a party or witness. Prior to a complainant, respondent or witness answering a cross-examination or other question, the decision-maker shall first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Live hearings may be conducted virtually with technology enabling participants simultaneously to see and hear each other.

The center shall create an audio or audiovisual recording, or transcript, of the live hearing and make it available to all parties for inspection and review.

Written Determination Submissions –

A written determination of responsibility (written determination) must not be finalized less than ten (10) days after the investigator completes the investigative report and provides it to all parties. Whether or not a live hearing is provided, if applicable, before the decision-maker reaches a determination regarding responsibility, the decision-maker shall afford each party the opportunity to submit written, relevant questions that a party wants to be asked of any party or witness, shall provide each party with the answers, and shall allow for additional, limited follow-up questions from each party.

Relevant questions for a party or witness must be submitted by each party within five (5) school days following receipt of the investigative report. Follow-up questions must be submitted by each party within five (5) school days of being provided the answers to the initial questions.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant as part of the follow-up questions and responses, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

The decision-maker shall explain to the party proposing the questions about any decision to exclude a question as not relevant.

Written Determination -

The decision-maker must issue a written determination for the conduct alleged in formal complaints. To reach this determination, the decision-maker shall 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.

In considering evidence, the decision-maker shall ensure credibility determinations are not based on an individual's status as a complainant, respondent or witness.

After considering all relevant evidence, the decision-maker shall issue a written determination that includes:

1. Identification of the allegations potentially constituting Title IX sexual harassment.

2. A description of the procedural steps taken from the receipt or signing of the formal complaint through the written determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence and hearings held, if applicable.

3. Findings of fact supporting the determination.

4. Conclusions regarding the application of the center (school)'s Code of Student Conduct or Joint Operating Committee policies to the facts.

5. A statement of, and rationale for, the result as to each allegation, including:

    a. Determination regarding responsibility.

    b. Disciplinary sanctions.

    c. Remedies designed to restore or preserve equal access to the center's education program or activity that will be provided by the center to the complainant. Such remedies may be punitive or disciplinary and need not avoid burdening the respondent.

6. The procedures, deadline and permissible bases for the complainant and respondent to appeal.

The written determination shall be provided to the parties simultaneously. The determination becomes final either:

1. On the date that the center provides the parties with the written decision of the result of the appeal, if an appeal is filed;

2. Or, if an appeal is not filed, on the date on which an appeal would no longer be considered timely, in accordance with the timeframe established for appeals in this Attachment.

The Title IX Coordinator shall be responsible to ensure that any remedies are implemented by the appropriate center officials and for following up as needed to assess the effectiveness of such remedies. Disciplinary actions shall be consistent with the Code of Student Conduct, Joint Operating Committee policies and administrative regulations, center procedures, applicable collective bargaining agreements, and state and federal laws and regulations, including specific requirements and provisions for students with disabilities. (Pol. 113.1, 218, 233, 317, 317.1)

Appeal Process

The center must offer both parties the right to appeal a determination of responsibility and the right to appeal the center's dismissal of a Title IX formal complaint or any allegation in the Title IX formal complaint. The scope of appeals related to Title IX sexual harassment are limited to the following reasons for appeal as stated in the Title IX regulations:

1. A procedural irregularity that affected the outcome of the matter.

2. New evidence that that could affect the outcome was not reasonably available at the time the decision to dismiss or determination of responsibility was made.

3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against the individual complainant or respondent or for or against complainants or respondents generally that affected the outcome of the matter.

Written notice of a party's appeal shall be submitted to the Title IX Coordinator within ten (10) school days after the date of the written determination. Notice of appeal shall include a brief statement describing the basis for the appeal.

The Title IX Coordinator shall ensure that the designated appeal authority is not the same person as the decision-maker that reached the determination, the investigator, or the Title IX Coordinator. The designated appeal authority shall be the outside hearing officer or center's solicitor.

For all appeals, the designated appeal authority shall:

1. Provide written notice to the other party when notice of an appeal is filed and implement appeal procedures equally for both parties.

2. Provide both parties a reasonable, equal opportunity to submit a written statement in support of or challenging the stated basis for the appeal. Supporting statements shall describe in detail as applicable the procedural irregularities asserted to have affected the outcome of the

determination, the nature of any new evidence asserted to have affected the outcome, and the nature of any bias asserted to have affected the outcome, with an explanation of how the outcome was affected by such factors. If evidence exists supporting the basis for appeal, it shall accompany the supporting statement, or it shall identify where such evidence may be found.

Supporting statements must be submitted to the appeal authority and provided to the other party within ten (10) school days of the written notice of appeal.

Statements in opposition to the appeal shall be submitted within five (5) school days of the submission of supporting statements. If a statement in opposition to an appeal refers to any evidence beyond what is described in a supporting statement, it shall accompany the statement in opposition, or it shall identify where such evidence may be found.

The appeal authority may accept and consider evidence in support of or in opposition to an appeal in making any conclusions necessary to deciding the appeal. Alternatively, when the appeal authority determines that factors exist making it necessary for the decision-maker to further develop the evidentiary record relevant to the basis for appeal, the appeal authority may return the matter to the decision-maker for that limited purpose.

3. Determine whether the appeal meets the grounds for permitted reasons for appeal and justifies modifying the written determination.

4. Issue a written decision setting forth the respects, if any, in which the written determination is modified and the rationale for the result within twenty (20) school days

5. Provide the written decision simultaneously to both parties. A copy of the written decision shall also be provided to the Title IX Coordinator.

Recordkeeping

The center shall maintain the following records for a of 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 Title IX sexual harassment investigation, including any written determination and any audio or audiovisual recording or transcript, and disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the center's education program or activity.

2. Any appeal and the result.

3. Any informal resolution and the result.

4. All materials used to train the Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process.

5. Records of any center actions, including any supportive measures, taken in response to a report or formal complaint of Title IX sexual harassment. In each instance, the center shall 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's education program or activity. If a center does not provide a complainant with supportive measures, then the center must document the reasons why such a response was not clearly unreasonable in light of known circumstances. The documentation of certain bases or measures does not limit the center in the future from providing additional explanations or detailing additional measures taken.

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