

SMYRNA SCHOOL DISTRICT

POLICY

Section:	4000 Personnel	Office Responsible:	Human Resources
Policy:	4235 Title IX: Nondiscrimination Policy, Notice of Nondiscrimination, and Grievance Procedures under 2024 Amendments to the U.S. Department of Title IX Regulations		
Related Policies:	Smyrna School District Nondiscrimination policy (prior to August 1, 2024)	Administrative Procedure:	N/A

I. Purpose

To ensure compliance, promote equality, prevent discrimination, provide a framework for action, protect the rights of individuals, support victims, and educate and train the school community so that all member of the Smyrna School District understand their rights and responsibilities.

II. Authority

Delaware Code, Title 14, Chapter 6, 605

US Department of Education, Office of Civil Rights

III. Definitions

Complainant:

- a. A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations; or,
- b. A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations and who was participating or attempting to participate in the District’s education program or activity at the time of the alleged sex discrimination.

Complaint: An oral or written request to the District that objectively can be understood as a request for the District to investigate and make a determination about alleged discrimination under Title IX or its regulations.

Consent: Defined as knowing, voluntary, and clear permission by word or action to engage in sexual activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. Reasonable reciprocation can establish consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to be kissed back. Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is

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withdrawn, sexual activity should cease within a reasonably immediate time. Silence or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent. Consent to some sexual contact (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.

Disciplinary Sanctions: Consequences imposed on a respondent following a determination under Title IX that the respondent violated the District's prohibition on sex discrimination.

Party: A complainant or respondent.

Pregnancy or related conditions:

- a. Pregnancy, childbirth, termination of pregnancy, or lactation;
- b. Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or,
- c. Recovery from pregnancy, childbirth, termination or pregnancy, lactation, or related medical conditions.

Relevant: related to the allegations of sex discrimination under investigation as part of these grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

Remedies: Measures provided, as appropriate, to a complainant or any other person the District identifies as having had their equal access to the District's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the District's education program or activity after a recipient determines that sex discrimination occurred.

Respondent: A person who is alleged to have violated the District's prohibition on sex discrimination.

Retaliation: Intimidation, threats, coercion, or discrimination against any person by the District, a student, or an employee or other person authorized by the District to provide aid, benefit, or service under the District's education program or activity for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the

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Title IX regulations.

Sex-Based Harassment: A form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity that is:

- a. **Quid pro quo harassment:** An employee, agent, or other person authorized by the District to provide aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such aid, benefit, or service on a person's participation in unwelcome sexual conduct;
- b. **Hostile environment harassment:** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
 - i. The degree to which the conduct affected the complainant's ability to access the District's education program or activity;
 - ii. The type, frequency, and duration of the conduct;
 - iii. The parties' ages, roles within the District's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
 - iv. The location of the conduct and the context in which the conduct occurred; and,
 - v. Other sex-based harassment in the District's education program or activity; or
- c. **Specific Offenses**
 - i. **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
 - ii. **Dating Violence:** Violence committed by a person:
 - 1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - 2. Where the existence of such a relationship shall be determined

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based on a consideration of the following factors:

- The length of the relationship;
- The type of relationship; and,
- The frequency of interaction between the persons involved in the relationship;

iii. Domestic Violence: Felony or misdemeanor crimes committed by a person who:

1. Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;
2. Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
3. Shares a child in common with the victim; or,
4. Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction; or,

iv. Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. Fear for the person's safety or the safety of others; or,
2. Suffer substantial emotional distress.

Supportive Measures: Individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

- a.** Restore or preserve that party's access to the recipient's education program or activity, including measures that are designed to protect the safety of the parties or the recipient's educational environment; or,
- b.** Provide support during the recipient's grievance procedures or during an informal resolution process.

IV. Policy Statement

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Nondiscrimination Policy & Notice of Nondiscrimination

The Smyrna School District (the “District”) adheres to all federal, state, and local civil rights laws prohibiting discrimination and harassment in employment and education. The District does not discriminate in its admissions practices, employment practices, or educational programs or activities on the basis of sex, except as may be permitted by law. As a recipient of federal financial assistance for education activities, the District is required by Title IX of the Education Amendments of 1972 (Title IX) to ensure that all of its education programs and activities do not discriminate on the basis of sex. Sex includes sex, sex stereotypes, sex characteristics, gender identity, sexual orientation, and pregnancy or related conditions. Sex discrimination is prohibited under Title IX and by District Policy, and it includes sex-based harassment, sexual assault, dating and domestic violence, stalking, quid pro quo harassment, hostile environment harassment, disparate treatment, and disparate impact.

The District also prohibits retaliation against any person opposing discrimination or harassment or participating in any internal or external investigation or complaint process related to allegations of sex discrimination.

Any District employee or student who acts to deny, deprive, or limit the educational, employment, residential, or social access, opportunities, and/or benefits of any member of the District community on the basis of sex is in violation of this Policy.

Any person may report sex discrimination (whether or not the person reporting is alleged to have experienced the conduct) in person, by mail, by telephone, by video, or by email, using the contact information listed for the Title IX Coordinator (below). A report may be made at any time (including during non-business hours) by contacting the Title IX Coordinator.

Questions regarding Title IX, including its application and/or concerns about noncompliance, should be directed to the Title IX Coordinator. For a complete copy of the Policy or more information, please visit www.smyrna.k12.de.us or contact the Title IX Coordinator.

Title IX Coordinator:

Mrs. Deborah Judy
Assistant Superintendent
Smyrna School District Central Office
82 Monrovia Avenue
Smyrna, DE 19977
(302) 653-8585
Deborah.Judy@smyrna.k12.de.us
www.smyrna.k12.de.us

A person may also file a complaint with the appropriate federal, state, or local agency within the time frame required by law. Depending upon the nature of the complaint, the appropriate

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agency may be the U.S. Department of Education Office for Civil Rights (OCR), the Department of Justice, and/or another appropriate federal or state agency

Philadelphia Office
Office for Civil Rights
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Telephone: 215-656-8541
FAX: 215-656-8605; TDD: 800-877-8339
Email: OCR.Philadelphia@ed.gov

Assistant Secretary for Civil Rights
Office for Civil Rights, National Headquarters
U.S. Department of Education
Lyndon Baines Johnson Dept. of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100
Telephone: 800-421-3481
Fax: 202-453-6012; TDD: 800-877-8339
Email: OCR@ed.gov

The District provides reasonable accommodations to persons with disabilities and religious accommodations, when that accommodation is consistent with federal and state law.

Mandated Reporting and Confidential Employees

All District employees, other than those deemed Confidential Employees, are Mandated Reporters and are expected to promptly report all known details of actual or suspected sex discrimination (including sex-based harassment), and/or retaliation to the Title IX Coordinator immediately, although there are some limited exceptions. Supportive measures may be offered as the result of such disclosures without formal District action.

Complainants may want to carefully consider whether they share personally identifiable details with Mandated Reporters, as those details must be shared with the Title IX Coordinator.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report Policy violations, and these employees will immediately make a report to the Title IX Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported

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to them.

The following sections describe the District's reporting options for a Complainant or third party (including parents/guardians when appropriate):

Confidential Employees

To enable Complainants to access support and resources without filing a Complaint, the District has designated specific employees as Confidential Resources. Those designated by the District as Confidential Resources are not required to report actual or suspected discrimination, harassment, or retaliation in a way that identifies the Parties. They will, however, provide the Complainant with the Title IX Coordinator's contact information and offer options and resources without any obligation to inform an outside agency or District official unless a Complainant has requested the information be shared.

There are two categories of Confidential Employees:

1. Those with confidentiality bestowed by law or professional ethics, such as lawyers, medical professionals, clergy, and counselors; and,
2. Those whom the District has specifically designated as confidential for purposes of providing support and resources to the Complainant; and,

For those in category 1, above, to be able to respect confidentiality, they must be in a confidential relationship with the person reporting, such that they are within the scope of their licensure, professional ethics, or confidential role at the time of receiving the notice. These individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor, elder, or individual with a disability, or when required to disclose by law or court order.

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with the following Confidential Employees:

Confidential Employees:

- a. School Nurses
- b. School Social Workers
- c. School Resource Officers
- d. School Constables

Designated Confidential Employees

- a. Building Principals

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b. Building Associate Principals

Mandated Reporters

Failure of a Mandated Reporter, as described above in this section, to report an incident of sex discrimination, sex-based harassment, or retaliation of which they become aware is a violation of this Policy and can be subject to disciplinary action for failure to comply/failure to report. This also includes situations when a harasser is a Mandated Reporter. Such individuals are obligated to report their own misconduct, and failure to do so is a chargeable offense under this Policy.

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

Scope

This Policy is only applicable to alleged incidents that occur after August 1, 2024. For alleged incidents of sexual harassment occurring prior to August 1, 2024, the policy and procedures in place at the time of the alleged incident apply. Applicable versions of those policies and procedures are available from the Title IX Coordinator and are located on the District's website.

This Policy applies to all employees, students, and other individuals participating in or attempting to participate in the District's program or activities, including education and employment.

This Policy prohibits sex discrimination as set forth in the Notice of Nondiscrimination.

This Policy may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed in accordance with this Policy.

Jurisdiction

This Policy applies to the District's education programs and activities (defined as including locations, events, or circumstances in which the District exercises substantial control over both the Respondent and the context in which the conduct occurred), circumstances where the District has disciplinary authority, and to misconduct occurring within any building owned or controlled by a District-recognized student organization.

This Policy may also apply to the effects of out of school/off-campus misconduct that limit or deny a person's access to the District's education program or activities.

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For disciplinary action to be issued under this Policy, the Respondent must be a District student, or employee at the time of the alleged incident. If the Respondent is unknown or is not a member of the District community, the Title IX Coordinator will offer to assist the Complainant in identifying appropriate District and local resources and support options, and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus). The District can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

All vendors serving the District through third-party contracts are subject to the policies and procedures of their employers and/or to policies and procedures to which their employer has agreed to be bound by their contracts.

When the Respondent is enrolled in or employed by another District or institution, the Title IX Coordinator can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to pursue action under that District's or institution's policies.

Grievance Procedures for Complaints of Sex Discrimination

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

The District will treat complainants and respondents equitably. The District presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures. The District will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. Retaliation is prohibited.

Complaints:

The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that the District investigate and make a determination about alleged discrimination under Title IX:

- a. A "complainant," which includes:
 - i. A student or employee of the District who is alleged to have been

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subjected to conduct that could constitute sex discrimination under Title IX; or,

- ii. A person other than a student or employee of the District who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in the District's education program or activity; or,
- iii. A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or,
- iv. The District's Title IX Coordinator.

Note that a person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 C.F.R. § 106.44(f)(1)(v).

With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint:

- a. Any student or employee of the District; or
- b. Any person other than a student or employee who was participating or attempting to participate in the District's education program or activity at the time of the alleged sex discrimination; or,
- c. The District may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances; or,
- d. When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

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

A Report provides notice to the District of an allegation or concern about discrimination, harassment, or retaliation and provides an opportunity for the Title IX Coordinator to provide information, resources, and supportive measures.

A Complaint provides notice to the District that the Complainant would like to initiate an

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investigation or other appropriate resolution procedures. A Complainant or individual may initially make a report and may decide at a later time to make a Complaint. Reports or Complaints of sex discrimination, sex-based harassment, and/or retaliation may be made by filing a Complaint with, or give verbal notice directly to, the Title IX Coordinator. Such a Complaint may be made at any time (including during non-business hours) by using the telephone number, email address, or by mail to the office of the Title IX Coordinator listed in this Policy.

Reporting carries no obligation to initiate a Complaint, and in most situations, the District is able to respect a Complainant's request to not initiate the grievance procedures. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where the District may need to initiate the grievance procedures. If a Complainant does not wish to file a Complaint, the District will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of confidentiality by giving notice that allows the District to discuss and/or provide supportive measures, in most circumstances.

False Allegations and Evidence

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a determination of a Policy violation.

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline under appropriate District policies.

Notice/Complaint

Upon receipt of a Complaint, or knowledge of an alleged Policy violation, the Title IX Coordinator will initiate a prompt initial evaluation to determine the District's next steps. The Title IX Coordinator will contact the Complainant/source of the notice to offer supportive measures, provide information regarding resolution options, and determine how they wish to proceed.

Initial Evaluation

The Title IX Coordinator will conduct an initial evaluation typically within seven (7) business days of receiving a Complaint of alleged misconduct. The initial evaluation typically includes:

- Assessing whether the reported conduct may reasonably constitute a violation of the Policy.
 - If the conduct may not reasonably constitute a violation of the Policy, the

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matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. It may then be referred to another process, if applicable.

- Determining whether the District has jurisdiction over the reported conduct, as defined in the Policy.
 - If the conduct is not within the District’s jurisdiction, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. If applicable, the conduct will be referred to the appropriate District department for resolution.
- Offering and coordinating supportive measures for the Complainant.
- Offering and coordinating supportive measures for the Respondent, as applicable.
- Notifying the Complainant, or the person who reported the allegation(s), of the resolution processes, including a supportive and remedial response, an Informal Resolution option, or the grievance procedures described below.
- Determining whether the Complainant wishes to make a Complaint.
- Notifying the Respondent of the grievance procedures, including a supportive and remedial response, or an Informal Resolution option, if a Complaint is made.

Helping a Complainant to Understand Options

If the Complainant indicates they wish to initiate a Complaint (in a manner that can reasonably be construed as reflecting intent to make a Complaint), the Title IX Coordinator will help to facilitate the Complaint, which will include:

- Working with the Complainant to determine whether the Complainant wishes to pursue one of three resolution options:
 - A supportive and remedial response, and/or,
 - Informal Resolution, or,
 - The grievance procedures described below.

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

If the Complainant elects to initiate the grievance procedures below, and the Title IX Coordinator has determined the Policy applies and that the District has jurisdiction, they initiate the grievance procedures, will provide the Parties with a notice of Investigation and

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allegation(s), and will initiate an investigation consistent with these procedures.

If any Party indicates (either verbally or in writing) that they want to pursue an Informal Resolution option, the Title IX Coordinator will assess whether the matter is suitable for Informal Resolution and refer the matter, accordingly.

If the Complainant indicates (either verbally or in writing) that they do not want any action taken, no Resolution Process will be initiated (unless deemed necessary by the Title IX Coordinator), though the Complainant can elect to initiate one later, if desired.

Title IX Coordinator Authority to Initiate a Complaint

If the Complainant does not wish to file a Complaint, the Title IX Coordinator, who has ultimate discretion as to whether a Complaint is initiated, will offer supportive measures and determine whether to initiate a Complaint themselves. To make this determination, the Title IX Coordinator will evaluate that request to determine if there is a serious and imminent threat to someone's safety or if the District cannot ensure equal access without initiating a Complaint. The Title IX Coordinator will consider the following non-exhaustive factors to determine whether to file a Complaint:

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

If deemed necessary, the Title IX Coordinator may consult with appropriate District employees, and/or conduct a violence risk assessment to aid their determination whether to

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initiate a Complaint.

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

Notice of Allegations:

Upon initiation of the District's Title IX grievance procedures, the District will notify the parties of the following:

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

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- Detail on how a party may request disability accommodations during the grievance procedures
- An instruction to preserve any evidence that is directly related to the allegations
- A statement that Parties who are members of a union are entitled to union representation throughout the process

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

If, in the course of an investigation, the District decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided or that are included in a complaint that is consolidated, the District will notify the parties of the additional allegations.

Timelines

The District will make a good faith effort to complete the grievance procedures within sixty to ninety (60-90) business days, including any appeals, which can be extended as necessary for appropriate cause by the Title IX Coordinator. The Parties will receive regular updates on the progress of the grievance procedures as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take longer, depending on issues such as the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors.

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

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

District action(s) or processes are not typically altered or precluded on the grounds that civil

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or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

The District will make a good faith effort to complete the grievance procedures as promptly as circumstances permit and will communicate regularly with the Parties to update them on the progress and timing of the process.

Ensuring Impartiality

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

The Title IX Coordinator will vet the assigned Investigator(s), Decision-maker(s), and Appeal Decision-Maker(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the grievance procedures, the Parties may raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another individual will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Superintendent.

The grievance procedures involve an objective evaluation of all available relevant and not otherwise impermissible evidence, including evidence that supports that the Respondent engaged in a Policy violation and evidence that supports that the Respondent did not engage in a Policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written investigation report that accurately summarizes this evidence.

Dismissal of a Complaint

The District may dismiss a complaint of sex discrimination if:

- The District is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in the District's education program or activity and is not employed by District;
- The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the District determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title

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IX even if proven; or

- The District determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, the District will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, the District will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the District will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing. The District will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then the District will also notify the respondent that the dismissal may be appealed.

Dismissals may be appealed on the following bases:

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

If the dismissal is appealed, the District will:

- Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Implement appeal procedures equally for the parties;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;
- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and,
- Notify the parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, the District will, at a minimum:

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- Offer supportive measures to the complainant as appropriate;
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and,
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within the District's education program or activity.

Emergency Removal of a Student

The District may emergency remove a student accused of Sex Discrimination or Sex-based Harassment upon receipt of a complaint or notice of an allegation of Sex Discrimination or Sex-based Harassment, or at any time during the resolution process. Prior to an emergency removal, the District will conduct an individualized risk assessment and may remove the student if that assessment determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies such action. Students accused of other forms of discrimination (not sex) are subject to interim suspension, which can be imposed for safety reasons.

When an emergency removal is imposed, wholly or partially, the affected student will be notified of the action, which will include a written rationale, and the option to challenge the emergency removal within three (3) business days of the notification. Upon receipt of a challenge, the Title IX Coordinator will meet with the student (and their Advisor, if desired) as soon as reasonably possible thereafter to allow them to show cause why the removal/action should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal or interim suspension is appropriate, should be modified, or lifted. When this meeting is not requested within three (3) business days, objections to the emergency removal or interim suspension will be deemed waived. A student can later request a meeting to show why they are no longer an imminent and serious threat because conditions related to imminence or seriousness have changed. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so.

The Respondent may provide information, including expert reports, witness statements, communications, or other documentation for consideration prior to or during the meeting. When applicable, a Complainant may provide information to the Title IX Coordinator for review.

An emergency removal may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The Title IX Coordinator will communicate the final decision in writing, typically within three (3) business days of the review meeting.

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Placing an Employee on Leave

When the Respondent is an employee accused of misconduct in the course of their employment, the employee may be placed on leave pending the completion of the grievance procedures.

Supportive Measures:

The District will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person's access to the District's education program or activity or provide support during the District's Title IX grievance procedures or during the informal resolution process. For complaints of sex-based harassment, these supportive measures may include:

- Referral to counseling, medical, and/or other healthcare services
- Referral to community-based service providers
- Education to the institutional community or community subgroup(s)
- Altering work arrangements for employees
- Safety planning
- Providing campus safety escorts
- Implementing contact limitations (no contact orders) between the Parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

The Parties are provided with a timely opportunity to seek modification or reversal of the District's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Title IX Coordinator. An impartial

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employee other than the employee who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the definition of supportive measures in § 106.2 of the federal Title IX Regulations. The District will also provide the Parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances change materially. The District typically renders decisions on supportive measures within seven (7) business days of receiving a request and provides a written determination to the impacted party(ies) and the Title IX Coordinator.

*Students with Disabilities: If the Complainant or Respondent is a student with a disability, the Title IX Coordinator shall consult with one or more members of the student's IEP team, or one or more members of the student's 504 team responsible for the student's placement decision to determine how to comply with requirements of IDEA and Section 504 in the implementation of supportive measures.

Advisors

The Parties may each have an Advisor (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings, interviews, and hearings during the grievance procedures, including intake. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.

The District fully respects the Weingarten rights of employees, meaning that for Parties who are entitled to union representation, the Recipient will provide notice and allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors.

Advisors should help the Parties to prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.

The Parties are expected to ask and respond to questions on their own behalf throughout the grievance procedures. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any grievance procedure meeting or interview. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation.

Advisors are entitled to the same opportunity as their advisee to access relevant evidence, and/or the same written investigation report that accurately summarizes this evidence.

Advisors are expected to maintain the confidentiality of the records the Recipient shares

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with them. Advisors may not disclose any Recipient work product or evidence the Recipient obtained solely through the Resolution Process for any purpose not explicitly authorized by the Recipient. Advisors are expected to advise their advisees without disrupting proceedings.

Any Advisor who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with the Recipient's established rules of decorum, will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview may be ended, or other appropriate measures implemented, including the District requiring the party to use a different Advisor or providing a different District-appointed Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

Investigation Procedures

The District will provide for adequate, reliable, and impartial investigation of complaints. The burden is on the District—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred. The District will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.

Once an investigation is initiated, the Title IX Coordinator appoints an Investigator(s) to conduct it. The Investigator will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

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

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

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the District to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- 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 District obtains

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that party's or witness's voluntary, written consent for use in its grievance procedures; and

- 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.

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

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

Employees (not including Complainant and Respondent) are required to cooperate with and participate in the District's investigation and Resolution Process. Student witnesses and witnesses from outside the District community cannot be required to participate but are encouraged to cooperate with District investigations and to share what they know about a Complaint.

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

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

The District will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

- The District will provide the parties with an accurate description of the evidence.
- The District will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party
- The District will provide a reasonable opportunity to respond to the evidence or the

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accurate description of the evidence; and

- The District will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

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

The Investigator(s) typically take(s) the following steps, if not already completed and not necessarily in this order:

- Determine the identity and contact information of the Complainant.
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all specific policies implicated.
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial evaluation to determine if the allegations indicate a potential Policy violation.
- Work with the Title IX Coordinator, as necessary, to prepare the initial notice of investigation and allegations. The initial notice of investigation and allegations may be amended with any additional or dismissed allegations.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the Parties and witnesses.
- When participation of a party is expected, provide that party with written notification of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible.
- Interview the Complainant and the Respondent and conduct follow-up interviews with each, as necessary.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Allow each party the opportunity to suggest witnesses and provide relevant

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evidence.

- Where possible, complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Write a draft investigation report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation, and party and witness interviews, and provides all relevant evidence.
- Provide the Parties and their respective Advisors an electronic copy of the draft investigation report as well as an opportunity to inspect and review all relevant evidence obtained as part of the investigation for a review and comment period of ten (10) business days so that each party may meaningfully respond to the evidence. The Parties may elect to waive all or part of the review period.

It is standard practice for Investigators to create record of all interviews pertaining to the grievance procedures (other than Informal Resolution meetings). The Parties may review copies of their own interviews, upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings. If an Investigator(s) elects to audio and/or video record interviews, all involved individuals should be made aware of audio and/or video recording.

Decision-Making Procedures

Decision-Makers Evaluation of the Evidence

- The Decision-maker will review the Final Investigative Report, all appendices, and the investigation file.
- If the record is incomplete, the Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the Parties or any witnesses, if needed.
- Upon reviewing the relevant evidence, the Decision-maker may also choose to pose additional questions:
 - To the extent credibility is in dispute and relevant to one or more of the allegations, the Decision-maker may meet individually with the Parties and witnesses to question them in order to assess their credibility. These meetings will be recorded and shared with the Parties.
 - At the Decision-maker's discretion, the Decision-maker may also meet with any party or witness to ask additional relevant questions that will aid the decision-maker in making their findings. These meetings will be recorded

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and shared with the Parties.

- If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening the grievance procedures at any time, and/or referring that information to another process for resolution.

Determination Whether Sex Discrimination Occurred

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence:

- The Decision-maker will apply the preponderance of the evidence standard to make a determination on each of the allegations and, if applicable, a recommendation for sanctions and/or remedies.
- The Decision-maker's determination process typically takes approximately ten (10) business days, but this timeframe can vary based on a number of factors and variables, The Parties will be notified of any delays.
- The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness.
- If the Decision-maker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
- The Decision-maker will notify the Parties in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable;
- The Decision-maker will not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
 - Coordinate the provision and implementation of remedies to a complainant and other people the District identifies as having had equal access to the District's education program or activity limited or denied by sex discrimination;
 - Coordinate the imposition of any disciplinary sanctions on a respondent,

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including notification to the complainant of any such disciplinary sanctions; and

- Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the District's education program or activity.
- Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent; and
- Not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

Withdrawal or Resignation Before Complaint Resolution

Students

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

Regardless of whether the Complaint is dismissed or pursued to completion of the Resolution Process, the District will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged discrimination, harassment, and/or retaliation. When a student respondent withdraws or leaves while the process is pending, the student may not return to the District in any capacity until the Complaint is resolved and any sanctions imposed are satisfied. If the student indicates they will not return, the District has discretion to dismiss the Complaint.

Employees

Should an employee respondent decide not to participate in the grievance procedures, the process proceeds absent their participation to a reasonable resolution. If an employee Respondent withdraws from the District with unresolved allegations pending, the Resolution Process may continue, or the Title IX Coordinator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, the District may still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged discrimination, harassment, and/or retaliation.

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When an employee resigns and the Complaint is dismissed, the employee may not return to the District in any capacity. Human resources will be notified, accordingly, and a note will be placed in the employee's file that they resigned with allegations pending and are not eligible for rehire with the District. The records retained by the Title IX Coordinator will reflect that status.

Disciplinary Sanctions and Remedies

Following a determination that sex-based harassment or sex discrimination has occurred, the District may impose disciplinary sanctions. The factors considered by the Decision-maker when determining sanctions and responsive actions may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the Parties
- Any other information deemed relevant by the Decision-maker(s)

Sanctions

Sanctions will be implemented as soon as it is feasible once a determination is final. Sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

Student Sanctions

The following are the common sanctions that may be imposed upon students singly or in combination:

- *Reprimand*: A formal statement that the conduct was unacceptable and a warning that further violation of any District Policy, procedures, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either District-

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sponsored or external counseling to better comprehend the misconduct and its effects.

- *Restrictions:* A student may be restricted in their activities, including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, study abroad, or from holding leadership in student organizations.
- *Probation:* An official sanction for violation of institutional Policy, providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional Policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Separation from the institution, or one or more of its facilities, for a definite period of time after which the student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension, on successfully applying for readmission, or upon a general condition that the student is eligible to return if the institution determines it is appropriate to re-enroll/readmit the student. The student is typically required to vacate institutional property within 24 hours of notification of the action, though this deadline may be extended at the discretion of the Title IX Coordinator or other appropriate official. During an institution-wide suspension, the student is banned from institutional property, functions, events, and activities unless they receive prior written approval from an appropriate institutional official. This sanction may be enforced with a trespass action, as necessary. This sanction may be noted as a Disciplinary Suspension on the student's official academic transcript.
- *Expulsion:* Permanent separation from the institution. The student is banned from institutional property, and the student's presence at any institution-sponsored activity or event is prohibited. This action may be enforced with a trespass action, as necessary. This sanction may be noted as Disciplinary Expulsion on the student's official academic transcript.
- *Other Actions:* In addition to, or in place of, the above sanctions, the District may assign any other sanctions as deemed appropriate.

Employee Sanctions/Responsive/Corrective Actions

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation in violation of this Policy may include:

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- *Verbal or Written Warning*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Shift or schedule adjustments*
- *Reassignment*
- *Assignment to New Supervisor*
- *Suspension/Administrative Leave with Pay*
- *Suspension/Administrative Leave without Pay*
- *Termination*
- **Other Actions:** In addition to or in place of the above sanctions/responsive actions, the District may assign any other responsive actions as deemed appropriate.

Remedies

Following the conclusion of the grievance procedures, and in addition to any sanctions implemented or Informal Resolution terms, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the Parties and/or the District community that are intended to stop the discrimination, harassment, and/or retaliation, remedy the effects, and prevent recurrence.

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

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- Referral to counseling and health services
- Education to the individual and/or the community
- Permanent alteration of work arrangements for employees
- Climate surveys
- Policy modification and/or training
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, class schedules, etc.

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

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

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

Failure to Comply with Sanctions, Responsive Actions, and/or Informal Resolution Terms

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

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

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

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the Title IX Coordinator's satisfaction.

Appeal of Determination

The District offers the following process for appeals from a determination whether sex discrimination occurred:

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An Appeal Decision-maker will be assigned by the Title IX Coordinator. No Appeal Decisionmaker(s) will have been previously involved in the Resolution Process for the Complaint, including in any supportive measure or dismissal appeal that may have been heard earlier in the process.

Appeals are limited to the following grounds:

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

Any party may submit a written request for appeal (“Request for Appeal”) to the Title IX Coordinator within five (5) business days of the delivery of the written decision by the Decision-maker.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the request will be denied, and the Parties and their Advisors will be simultaneously notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Decision-maker will provide both parties with the Request for Appeal, and will be notified that they have five (5) business days to submit a written response to the appeal.

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds.

All decisions apply the preponderance of the evidence standard.

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

The Appeal decision letter will be sent to all Parties simultaneously, or without significant time delay between notifications. The Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that may result which the District is permitted to share according to federal or Delaware

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law, and the rationale supporting the essential findings to the extent the District is permitted to share under federal or Delaware law.

Written notification may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the Parties as indicated in official institutional records, or emailed to the Parties' District-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, the Appeal decision will be presumptively delivered.

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

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

Informal Resolution

In lieu of resolving a complaint through the District's Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. The District does not offer informal resolution to resolve a complaint that includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or when such a process would conflict with Federal, State, or local law.

Resolution proceedings are confidential. All individuals present at any time during the Resolution Process are expected to maintain the confidentiality of the proceedings in accordance with this Policy.

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Title IX Coordinator at any time prior to a final determination, or the Title IX Coordinator may offer the option to the Parties, in writing. The District will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution.

Before initiation of an Informal Resolution process, the District will provide the Parties with a notice that explains:

- The allegations;
- The requirements of the Informal Resolution process;
- That, prior to agreeing to a resolution, any party has the right to withdraw from the

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Informal Resolution process and to initiate or resume the District's grievance procedures;

- That the Parties' agreement to a resolution at the conclusion of the Informal Resolution process will preclude the Parties from initiating or resuming the resolution process arising from the same allegations;
- The potential terms that may be requested or offered in an Informal Resolution agreement, including notification that an Informal Resolution agreement is binding only on the Parties; and
- What information the District will maintain, and whether and how it could disclose such information for use in its Resolution Process.

The following are types of Information Resolution that may be offered:

1. **Supportive Resolution:** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation.
2. **Educational Conversation:** When the Title IX Coordinator can resolve the matter informally by having a conversation with the Respondent to discuss the Complainant's concerns and District expectations or can accompany the Complainant in their desire to confront the conduct.
3. **Accepted Responsibility:** When the Respondent is willing to accept responsibility for violating Policy and is willing to agree to actions that will be enforced similarly to sanctions, and the Complainant(s) and the District are agreeable to the resolution terms.
4. **Alternative Resolution:** When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include but is not limited to mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.

The individual facilitating an Informal Resolution must be trained and cannot be the Investigator, Decision-maker, or Appeal Decision-maker.

Any party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume the grievance procedures.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the grievance procedures should Informal Resolution not be successful, unless agreed to by all Parties.

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If an investigation is already underway, the Title IX Coordinator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

The Title IX Coordinator maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the Agreement and resumption of the grievance procedures, referral to the conduct process for failure to comply, application of the enforcement terms of the Agreement, etc.). The results of Complaints resolved by alternative resolution are not appealable.

If an Informal Resolution option is not available or selected, the District will initiate or continue an investigation and subsequent Resolution Process to determine whether the Policy has been violated.

Recordkeeping

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

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

The District will also maintain any and all records in accordance with Delaware and federal

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laws.

Accommodations and Support During the Resolution Process

Disability Accommodations

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

Anyone needing such accommodations or support should contact the Title IX Coordinator, who will work with disability support colleagues as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.


Other Support

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

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

*Italics indicate Delaware Regulation Administrative Code Title 14 wording

Board Approval Acknowledged by:



Christine Malec, President
Smyrna School District Board of Education

Policy Actions

Adopted: 08/28/2024

Revised: