

PROCEDURE 102B--~~TITLE IX SEX NONDISCRIMINATION~~ GRIEVANCE PROCEDURES FOR ~~SEXUAL HARASSMENT CLAIMS~~ AND PROCESS

I. SCOPE AND PURPOSE

This procedure addresses sexual harassment that occurs within the school district's education programs and activities and that involves alleged misconduct of a school district employee, student, or other school official or agent. This procedure does not apply to sexual harassment that occurs off-school grounds, in a private setting, and outside the scope of the school district's education programs and activities. This procedure does not apply to sexual harassment that occurs outside the geographic boundaries of the United States, even if the sexual harassment occurs in the school district's education programs or activities.

II. DESIGNATION OF TITLE IX COORDINATOR

The school district designates the ~~Assistant Superintendent of Equity and Achievement as its Title IX Coordinator~~Executive Director of Human Resources. The Title IX Coordinator or their designee is responsible for acting as the primary contact for the parties involved in a complaint of sexual harassment. The Title IX Coordinator or their designee is also responsible for effective implementation of any supportive measures or remedies. The Title IX Coordinator and their designee must be free from conflicts of interest and bias when administering the grievance process. Any student, parent, guardian or employee having questions regarding the application of Title IX and its regulations and/or this policy and grievance process may discuss them with the Title IX Coordinator or their designee. The Title IX Coordinator's contact information is as follows:

~~Assistant Superintendent of Equity and Achievement~~Executive Director of Human Resources
11200 93rd Ave. N
Maple Grove, MN 55369
(763) 391-7000

III. DEFINITIONS

A. "Sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

1. A school employee conditioning the provision of an aid, benefit, or service of school on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking, as those terms are defined herein.
 - a. "Sexual assault" means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
 - b. "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. Whether such a relationship exists depends on the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 - c. "Domestic Violence" means 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 grant monies, 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.

- d. "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.
- B. "Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- C. "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- D. "Party" or "Parties" refers to both the complainant or respondent.
- E. "Education program or activity" includes locations, events, or circumstances over which the School District exercised substantial control over both the respondent and the context in which the sexual harassment occurs.
- F. "Investigator" means a person who investigates a ~~formal~~ complaint. The investigator of a ~~formal~~ complaint may not be the same person as the Decision-maker or the Appellate Decision-maker. The Investigator may be a school district employee, school district official, or a third party designated by the school district.
- G. "Decision-maker" means a person who makes a determination regarding responsibility after the investigation has concluded. The Decision-maker cannot be the same person as the Title IX Coordinator, the Investigator, or the Appellate Decision-maker. If the respondent is an employee of the school district the Director of Human Resources or their designee will serve as the decision maker. If the respondent is a student enrolled in a secondary school within the school district, the school district's Assistant Superintendent for Secondary Schools or their designee will serve as the decision maker. If the respondent is a student enrolled in an elementary school within the school district, the school district's Assistant Superintendent for Elementary Schools or their designee will serve as the decision maker.
- H. "Appellate Decision-maker" means a person who considers and decides appeals of determinations regarding responsibility and dismissals of ~~formal~~ complaints. The Appellate Decision-maker cannot be the same person as the Title IX Coordinator, Investigator, or Decision-maker. The Appellate Decision-maker is the school district's General Counsel or their designee.
- I. "Supportive measures" means individualized services provided to the complainant or respondent without fee or charge that are reasonably available, non-punitive, non-disciplinary, not unreasonably burdensome to the other party, and designed to ensure equal educational access, protect safety, and deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, alternative educational services as defined under Minn. Stat. § 121A.41, as amended, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the school district buildings or property, and other similar measures.

IV. ASSURANCES OF NEUTRALITY AND ADEQUATE TRAINING

- A. A Respondent is presumed to not be responsible for the alleged conduct until a determination regarding responsibility has been made.
- B. The Title IX Coordinator, Investigator(s), and Decision-Maker(s) will receive training regarding the definition of sexual harassment in this process, how to serve impartially, how to avoid prejudgment of the facts at issue, bias based on sex, bias in favor of complainants or respondents in general, and bias or conflicts of interest with respect to any particular student(s).
- C. The Title IX Coordinator shall receive training regarding the requirements of a ~~formal~~ complaint, the required contents of the notice of allegations, and the steps of the grievance process.

D The Investigator(s) and Decision-Maker(s) will be trained on what constitutes relevant evidence, for purposes of the investigation report and/or advisor questioning of the other party.

V. ADVISORS

Complainants and respondents are permitted to have an advisor of their choice present at all proceedings that require the complainant or respondent's attendance during the investigation. An advisor may be, but is not required to be, an attorney. Advisors will be required to agree to non-disclosure of information/data regarding the grievance process, to ensure the data privacy rights of the parties and any witnesses.

VI. INITIAL RESPONSE TO ~~FORMAL~~ COMPLAINTS

- A. **~~Formal~~ Complaint.** The term "~~formal~~ complaint" means a document, either electronic or in hard copy, filed by a complainant or signed by the Title IX Coordinator or an oral complaint to district staff or the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the School District investigate the allegation of sexual harassment. The complainant must be participating or attempting to participate in a School District education program or activity at the time the ~~formal~~ complaint is filed.
- B. **Initial Contact with Complainant.** The Title IX Coordinator must promptly contact the complainant (i.e., the individual alleged to be the victim of sexual harassment, who may or may not be the person who reported the sexual harassment) to:
1. Discuss the availability of supportive measures;
 2. Consider the complainant's wishes with respect to supportive measures;
 3. Inform the complainant of the availability of supportive measures with or without filing a ~~formal~~ complaint;
 4. If ~~formal~~ complaint has not been completed, explain to the complainant the process for filing a ~~formal~~ complaint;
 5. If appropriate, determine suitable supportive measures and coordinate with appropriate administrators to provide supportive measures to the complainant during the pendency of the investigation;
 6. Document any supportive measures provided and maintain privacy of supportive measure as required by Title IX and the Minnesota Government Data Practices Act.

C. **Dismissal of Complaint**

1. After receipt of ~~formal~~ complaint, the Title IX Coordinator will determine whether the ~~formal~~ complaint is not covered under Title IX and these procedures. A ~~formal~~ complaint must be immediately dismissed if:
 - a) The conduct alleged in the ~~formal~~ complaint, even if proven, does not meet the definition of sexual harassment set by these procedures;
 - b) The conduct alleged in the formal complaint did not occur in the School District's education program or activity; or
 - c) The conduct alleged did not occur against a person in the United States.
2. The ~~formal~~ complaint may also be dismissed if:
 - a) The complainant notifies the Title IX Coordinator, in writing, that they would like to withdraw the complaint;
 - b) The respondent is no longer enrolled at or employed by the school; or
 - c) Specific circumstances prevent the School District from gathering evidence sufficient to reach a determination as to the complaint.
3. If it is determined that the ~~formal~~ complaint will be dismissed under this paragraph, the parties shall be notified, in writing, of dismissal and the reason(s) for the dismissal. Dismissal of a ~~formal~~ complaint does not preclude the imposition of discipline arising out of the same conduct for any other violations of the student code or the School District's policies.

- D. **Notice to the Parties.** If the complaint is not dismissed under Section C above, within 5 business days of receipt of the ~~formal~~ complaint, the Title IX Coordinator will provide both parties with a written notice informing the parties about who will investigate the ~~formal~~ complaint and notice regarding the following information:
1. Notice of this grievance process, including any informal resolution process;
 2. Notice of the allegations, including sufficient details to the extent they are known at the time. The phrase "sufficient details" includes, but is not limited to, the identities of the parties involved in the incident, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident. To the extent that any of these details are not known at the time the ~~formal~~ complaint is filed, the Title IX Coordinator must provide a supplemental notice when it learns of new or additional information;
 3. A statement that the respondent is presumed not responsible and that a determination regarding responsibility will be made at the conclusion of the grievance process;
 4. Notice that the parties may have an advisor of their choice, subject to the requirements of Section IV of this Process; and
 5. Notice informing the parties of any provision of the School District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

VII. EMERGENCY REMOVALS AND INTERIM SUPPORTIVE MEASURES

- A. Generally, consistent with the School District's presumption of non-responsibility until the investigation has been completed and a determination of responsibility has been made, the School District will not suspend, expel or exclude a respondent while an investigation is pending under the grievance process.
- B. Notwithstanding Paragraph A of this Section, if, after undertaking an individualized safety and risk analysis, the School District determines that the respondent poses an immediate threat arising from the allegations of sexual harassment to the physical health or safety of any student or other individual, including the respondent themselves, the respondent may be removed from a school building on an emergency basis in a manner consistent with the Pupil Fair Dismissal Act or applicable contract rights.
- C. A respondent who is removed on an emergency basis must be notified of the School District's decision and provided with an opportunity to challenge the decision immediately following removal. The respondent shall bear the burden of proving that the removal decision was incorrect.
- D. Nothing in this Section shall be construed to prevent the School District from suspending, excluding, expelling, or otherwise removing a student from school for any reason other than a pending sexual harassment investigation.
- E. The School District may place a non-student employee who is accused of sexual harassment on administrative leave pending the completion of this grievance process.
- F. The School District should offer interim supportive measures on an equal basis to all parties. Any measure that is made available to one party shall not be denied to the other party. Any supportive measures provided to either party shall be maintained as confidential, to the extent that confidentiality will not impair the School District's ability to provide such measures.

VIII. CONDUCT OF INVESTIGATIONS

- A. **Presentation of Evidence and Identification of Witnesses.** Both parties shall have an equal opportunity to present evidence and to identify witnesses who they claim have potentially relevant evidence.
- B. **Interviews of Parties.** A party shall be notified in writing of any interview of that party with sufficient time to prepare. The written notification shall include the date, time,

location, participants, and purpose of the interview. Neither a party nor that party's advisor shall be permitted to attend the interview of an adverse party.

- C. **Interviews of Witnesses.** Neither party nor their advisor shall have the right to receive advance notice of the interview of a third-party witness, nor shall any party or their advisor be allowed to attend the interview of a third-party witness.
- D. **External Records.** A party's medical or psychological records may only be obtained, accessed, considered, disclosed, or otherwise used with the voluntary written consent of the eligible student or of a parent. Eligible students or parents should be advised that any medical or psychological records that are disclosed to the School District will be shared with the opposing party and the opposing party's advisor during the grievance process.
- E. **Review of Evidence.** Both parties shall be provided any evidence that is directly related to the allegations raised by a ~~formal~~ complaint, regardless of whether the School District intends to rely on said evidence in reaching a determination regarding responsibility, prior to completion of the investigative report. The parties, and their advisors, if any, will each have ten (10) calendar days to respond to the evidence in writing, and the investigator must consider any written submissions received within those ten days prior to completion of the investigative report.
- F. **Investigative Report.** The investigator will complete their investigation and prepare a written report within 30 calendar days of their appointment to investigate the ~~formal~~ complaint. The investigator can extend the deadline for completion of the investigation report for good cause and will timely notify the parties of the need for an extension. The investigative report must fairly, and neutrally, summarize the relevant evidence.

VIII. DETERMINATION OF RESPONSIBILITY

- A. **Responding to the Completed Investigation Report.** Upon completion of the investigation report, the investigator will provide a copy of their report to the decision-maker. After promptly reviewing the investigation report, the decision maker will provide a copy of the investigation report to the complainant and respondent simultaneously.
- B. **Response to Investigation and Written Questions.** After the investigation report has been provided to the parties, but before a decision is made regarding responsibility, the decision-maker shall provide each party the opportunity to provide a written response to the investigation report and to submit written, relevant questions that the party wants asked of any party or witness.
 - 1. Each party must provide their written response to the investigation report and their written questions to the decision-maker within 10 business days after the investigator sends the parties the written investigation report. A party who does not provide written questions by this deadline is deemed to have waived their opportunity to participate in this process.
 - 2. The decision-maker will screen the questions for relevance within 5 business days after receiving them. If the decision-maker determines that a question is irrelevant, the party proposing the question will receive a written explanation of why the question is not relevant and will not be asked. Questions and/or evidence relating to the complainant's sexual predisposition and prior sexual behavior are not relevant, unless they are offered to prove consent or to prove that the act alleged was committed by someone other than the respondent.
 - 3. The party or witness to whom the written questions are proposed will have 10 business days to respond in writing. Written responses will be provided to the party proposing the questions, who will then have 3 business days to submit follow-up questions. Follow-up questions will also be screened for relevance and to determine whether the follow up questions are confined to the response(s) provided by the other party. Answers to relevant follow-up questions will be provided within 3 business days.

4. The advisor of the party's choice may assist with the formulation of questions and of answers to questions.
- C. **Standard of Proof.** The School District retains, at all times, the burden of proof and the burden of gathering sufficient evidence to reach a determination regarding responsibility. In reviewing the investigation report and determining whether the respondent is responsible for the conduct alleged, the School District's decision-maker(s) shall apply the preponderance of the evidence standard. "Preponderance of the evidence," as used in the procedure, means that the respondent will be found responsible only if it is more likely than not that they engaged in the conduct constituting sexual harassment, as defined by these procedures. The same standard of proof shall apply regardless of whether the respondent is a student or a staff member.
- D. **Written Determination Regarding Responsibility.** The decision-maker(s) shall issue a written determination within 60 calendar days of receiving the investigation report. The written determination must be provided simultaneously to both parties and should contain the following:
 1. Identification of the allegations potentially constituting sexual harassment;
 2. A description of the procedural steps taken under this process, including any notifications, interviews, hearings, and other methods used to gather evidence, if applicable;
 3. Findings of fact supporting the determination;
 4. Conclusions regarding the School District's Policies and Procedures;
 5. A statement of the result as to each allegation, including a determination regarding responsibility, the rationale for the result, any disciplinary sanctions imposed on the respondent, and any remedies designed to restore or preserve the complainant's equal access to the School District's education program or activity; and
 6. The appeal procedure described in this procedure.

IX. SANCTIONS AND REMEDIES

If a respondent is determined to have engaged in conduct that meets the definition of sexual harassment, discipline shall be imposed in accordance with the School District's policies and procedures. The level of discipline imposed shall be determined based on the facts identified in the investigation report and relied upon by the decision-maker, the respondent's disciplinary history, the severity of the conduct, and other factors that the School District may deem relevant.

X. APPEALS

- A. Either party may appeal the decision-maker's determination, or the dismissal of a **formal** complaint, within 10 business days of the written determination or written notice of dismissal being issued. The appeal of the written determination must be in writing and must be
- B. An appeal may be made on any of the following bases:
 1. A procedural irregularity affected the outcome of the matter;
 2. New evidence, that was not reasonably available at the time the determination regarding responsibility or dismissal was made, would affect the outcome of the matter; or
 3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias against the complainant or respondent in this matter, or against complainants or respondents in general.
- C. Appeals shall be heard by a decision-maker who did not make the initial determination regarding responsibility and who is not the investigator in this matter or the Title IX Coordinator.

- D. The decision-maker reviewing the appeal shall notify both parties when either party has filed an appeal. Both parties will have 5 business days from when the decision-maker reviewing the appeal provides such notice to submit a written statement in support of, or challenging, the dismissal or the determination of responsibility.
- E. The appeal decision-maker shall issue a written decision within 30 calendar days of a party's written appeal simultaneously to both parties that describes the result of the appeal and provides the rationale for said result.

XI. DISTRICT EXTENSION OF TIMELINES

Although the school district strives to adhere to the timelines described above, in each case, the school district may extend the time frames set forth in this procedure for good cause. Good cause may include, without limitation: an agreement of the parties to engage in information resolution; the complexity of the allegations; the severity and extent of the alleged misconduct; the number of parties, witnesses, and the types of other evidence (e.g., forensic evidence) involved; the availability of the parties, advisors, witnesses, and evidence (e.g., forensic evidence); concurrent law enforcement activity; intervening school district holidays, breaks, or other closures; the need for language assistance or accommodation of disabilities; and/or other unforeseen circumstances.

XII. RETALIATION

It is a violation of these procedures for any individual to intimidate, threaten, coerce, or discriminate against any individual to interfere with their rights under this procedure, or because that individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in any process described in this process. Complaints alleging retaliation may be filed with the Title IX Coordinator. Notwithstanding the above, it shall not be considered retaliation if the School District asserts a code of conduct violation against any individual who makes a materially false statement in bad faith. A determination regarding responsibility, standing alone, does not prove that any party made a materially false statement in bad faith.

XIII. INFORMAL RESOLUTION

At any time after a ~~formal~~ complaint has been filed, and before a determination regarding responsibility has been made, the School District may offer informal resolution. "Informal resolution" means options for resolving a ~~formal~~ complaint that do not involve a full investigation and adjudication. Informal resolution may encompass a broad range of conflict resolution strategies, including mediation or restorative justice. Both parties must voluntarily consent in writing to participate in any informal resolution process(es). Either party retains the right to withdraw from the informal resolution process at any time before a resolution is reached and to resume the grievance process as laid out above. Once both parties have agreed to an informal resolution, however, neither party may resume the grievance process with respect to those allegations. Voluntary consent shall only be effective where the parties both receive a written notice detailing the allegations, the informal resolution process and its consequences, and the right to withdraw before a resolution is reached. Informal resolution is not available where the complaint alleges that an employee has sexually harassed a student.

Procedure 102B Adopted 11/16/2021

Legal References:

20 U.S.C. §§ 1681-1688 (Title IX of the Education Amendments of 1972)
34 C.F.R. Part 106 (Implementing Regulations of Title IX)

