

Book	Policy Manual
Section	Special Update - Title IX - June 2024 MI
Title	Special Update - Title IX - June 2024 OVERVIEW
Code	01 - OVERVIEW
Status	From Neola



## **MI LOCAL UPDATE OVERVIEW AND COMMENTS**

### **SPECIAL UPDATE - TITLE IX - NEW POLICY AND AG 2264**

#### **JUNE 2024**

This Special Update is issued to Neola Clients in response to the recent release of revisions to the Title IX regulations. The new policy and administrative guideline, along with the new form, provide structure and procedure for meeting the requirements of this Federal regulation.

Nearly twenty-two (22) months after the United States Department of Education (“ED”) Office for Civil Rights (“OCR”) issued a Notice of Proposed Rule Making (“NPRM”), on April 19, 2024, OCR released the Final Rule (aka “2024 Title IX Regulations”). In response, Neola has developed a new Policy 2264 and a new Administrative Guideline 2264. Neola is compelled to keep its existing Title IX policy and AG (2266), which it originally drafted after OCR released the 2020 Title IX regulations in May of 2020, because OCR stated when it released the 2024 Title IX regulations that any “reports” or “Formal Complaints” involving allegations of sex-based harassment (e.g., sexual harassment) that involve conduct alleged to have occurred prior to August 1, 2024 (the effective date of the 2024 Title IX regulations) must be processed in accordance with the 2020 Title IX regulation. A new introduction regarding the effective date has been added to each. For this reason, clients will need to continue to train their staff in the requirements and procedures delineated in the 2020 Title IX regulations (Policy 2266 and AG 2266) at the same time they train their staff to implement the 2024 Title IX regulations (and new Policy 2264 and AG 2264).

It is important to notice that new Policy 2264 is broader in scope than its predecessor. Whereas the 2020 Title IX regulations focused on sexual harassment, the 2024 Final Rule covers all forms of sex discrimination, not just “sex-based harassment” – e.g., claims of unequal athletic opportunities, admissions discrimination, discrimination in courses or academic programs (i.e., excluding students from certain classes or programs based on their sex), pregnancy discrimination, unequal treatment based on parental, family or marital status, discrimination in employment (including in hiring, promotion, and compensation), and retaliation.

The new policy contains updated definitions, including for complaints (which can be oral or written; previously a Formal Complaint had to be in writing), complainants (which now includes persons who participated in or attempted to participate in the District’s education program or activity at the time of the alleged sex discrimination – i.e., it includes persons who previously were involved in the District’s education program or activity, but no longer are), and hostile environment harassment (which now entails behaviors that are 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 District’s education program or activity; previously the conduct had to be objectively offensive, severe AND pervasive), along with new definitions related to confidential employees (be sure to review the **DRAFTING NOTE** that accompanies this term) and pregnancy or related conditions.

This last new definition is relevant because the 2024 Title IX regulations include a significant amount of content pertaining to protecting students and employees who are pregnant or have related conditions.

Also note the “reports” of sexual harassment found in the 2020 Title IX regulations are now referred to as “notifications” of alleged sex discrimination in the 2024 Final Rule.

Additionally, while the Board can continue to designate more than one Title IX Coordinator, it must designate one (1) primary Title IX Coordinator who is responsible for all key decisions. This change may cause districts to develop alternative names for the persons who are designated to assist the Title IX Coordinator – e.g., the Assistant or Deputy Title IX Coordinator.

Turning to the grievance procedures, the 2024 Final Regulations provide greater flexibility to the District. For example, the Title IX Coordinator can now serve as both the investigator and decisionmaker, in appropriate circumstances. In addition, we are hopeful that districts will be able to complete the grievance procedures in less time since the two (2), ten (10) day mandatory periods associated with (1) the parties’ opportunity to review the evidence before the investigator’s report is finalized, and (2) the period after the investigator’s report is completed and the decisionmaker can issue a determination of responsibility, have been altered or eliminated. Further, the District can now implement an informal resolution process – with the mutual agreement of the parties – without a Formal Complaint having been filed first.

When it comes to the District's obligation to offer supportive measures to complainants and respondents, there now is a review mechanism for a person to challenge or request new or different supportive measures.

With respect to dismissal of a complaint prior to an investigation, the Title IX Coordinator still has discretion to take such an action, but it is no longer mandatory in certain circumstances. Likewise, the Title IX Coordinator can still elect to file a complaint – in place of a complainant – in specific situations, but the 2024 Final Rule outlines several factors the Title IX Coordinator needs to consider before taking such an action.

The 2024 Final Rule also expands the District's responsibility to address sex discrimination that occurs in any setting over which the District asserts disciplinary authority. As such, the Board may want to evaluate how it handles cyberbullying and whether its Athletic Code of Conduct is enforced 24/7/365. It further requires the District to address a sex-based hostile environment under its education or activity, even when some of the conduct alleged to be contributing to the hostile environment occurred outside the education program or activity, or outside the United States.

The District also will want to pay particular attention to the following sections of new Policy 2264:

- The content of the Notice/Statement of Nondiscrimination and where it needs to be published. To aid in this area, Neola is offering a new Form 2264F1 that can be utilized to comply with the Notice/Statement of Nondiscrimination requirements of the 2024 Final Rule.
- The enhanced and expanded training requirements (training has to be completed promptly upon employment and when a person's responsibilities with respect to Title IX implementation change, and annually thereafter).

Finally, as discussed in an early **DRAFTING NOTE** in the new policy, the 2024 Title IX regulations expressly state that discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. It is this language that has resulted in a significant portion of the negative reaction that has been voiced concerning the 2024 Final Rule and led to litigation related to whether OCR exceeded its authority when reading the holding from the Bostock decision – that involved Title VII – into Title IX. The Board will want to be sensitive to the language in the 2024 Final Rule that states that in the limited circumstances when Title IX permits different treatment or separation on the basis of sex, the District shall not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, except as otherwise permitted under Title IX. The Title IX regulations continue by stating that adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex. This latter language has direct implications for bathroom and locker room usage.

Both new Policy 2264 and AG 2264 contain numerous **OPTIONS** and **DRAFTING NOTES** to assist the Board and the Administration with tailoring the template documents to the District's individual needs and preferences. Adopting the new documents, however, is necessary to remain consistent with the 2024 Title IX regulations, which "carry the force and effect of law" as a result of the U.S. Department of Education going through the notice and comment rulemaking process prior to promulgating them.

As always, your Neola Associate is available to answer questions concerning the content of the new policy and AG; however, given there is pending litigation pertaining to the 2024 Final Rule and many of the topics covered by the documents may be viewed as locally sensitive, Neola encourages the Board to consult with its Legal Counsel as it (1) selects among the various options, and (2) ultimately implements its Title IX nondiscrimination policy and grievance procedures.

This Update includes the following documents:

- **Policy 2264 - Nondiscrimination on the Basis of Sex in Education Programs or Activities (New)**
- **Policy 2266 - Nondiscrimination on the Basis of Sex in Education Programs or Activities (Revised)**
- **Administrative Guideline 2264 - Nondiscrimination on the Basis of Sex in Education Programs or Activities (New)**
- **Administrative Guideline 2266 - Nondiscrimination on the Basis of Sex in Education Programs or Activities (Revised)**
- **Form 2264 F1 - Notice and Statement of Nondiscrimination (New)**

These documents may be downloaded from the Policy Update and the AG Update menus in your BoardDocs console. If you have questions about any of these Special Update materials, contact your Neola Associate.

If you have questions about any of these Special Update materials, please contact your Neola Associate. All production-related materials and questions should be directed to the Production Office - Coshocton at 632 Main Street, Coshocton, Ohio 43812 (phone 800-407-5815, fax 740-622-2557). Billing and other questions should be directed to the Business Office - Stow at 3914 Clock Pointe Trail, Suite 103, Stow, Ohio 44224 (phone 330-926-0514, fax 330-926-0525).

Book Policy Manual

Section Special Update - Title IX - June 2024 MI

Title Special Update - Title IX - June 2024 Policy Disposition Sheet

Code 02 - Policy Disposition Sheet

Status From Neola

**DISPOSITION OF NEW/REVISED/REPLACEMENT POLICIES FOR BOARD ADOPTION**

**SPECIAL UPDATE - TITLE IX - JUNE 2024**

**Coding for District-Specific Edits**

\*1 = drafted by District staff

\*2 = if the material was a work for hire, that is, material the District paid someone else to develop but from whom the District purchased the rights to publish

\*3 = if the material is copyrighted to someone else from whom the District has secured permission to publish the material (No code is needed for accepting Neola's vetted material)

Policy Number	Date Adopted	District-Specific Edits (1, 2, or 3)	Date Tabled	Date Rejected
po2264 NEW				
po2266 REVISED				

Book	Policy Manual
Section	Special Update - Title IX - June 2024 MI
Title	Special Update - Title IX - June 2024 USDOE Title IX Regulations and Future Guidance
Code	03 - Memorandum
Status	From Neola

## **MEMORANDUM**

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**Date:** June 7, 2024

**To:** Neola Clients

**Subject:** US DOE Title IX Regulations and Future Guidance

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This update provides an update to Neola clients on the following:

1. the status of the final Title IX regulations;
2. Neola's release of a revised policy and guideline that incorporate the revisions to the Title IX final regulations; and
3. Neola's plan to review all guidance (including state-specific guidance) issued regarding the Title IX final regulations and, for those clients who are interested, release a revised policy and guideline consistent with state-specific guidance.

The "Special Update - Title IX" is now available and includes a new policy (Policy 2264) and a new Administrative Guideline (AG 2264). Importantly, the new policy and guideline strictly adhere to the requirements of the Title IX regulations issued by US DOE that become effective August 1, 2024. They do not include any state-specific guidance.

Moving forward, Neola will continue to monitor litigation challenging the Title IX regulations, as well as guidance issued by the State. In the event an injunction is entered impacting the effective date of the Title IX regulations, you will need to consult with your Board legal counsel regarding the need to delay implementation of the new policy and guideline.

For those clients that desire to wait until guidance is issued by the State (if any), Neola's plan is to incorporate any such guidance into state-specific versions of Policy 2264 and AG 2264 as quickly as possible.

The Neola pledge to clients is to provide legally sufficient policies and guidelines under Federal and State law. In this particular circumstance, in the event of any potential conflict between the final Title IX regulations and state-specific versions of Policy 2264 and AG 2264 (incorporating future guidance from State leadership), Neola will make them known to you at the time of the release as well as any impact on our policy warranty.

If you have legal questions regarding the final Title IX regulations, litigation challenges to the final Title IX regulations, potential impacts on the School Board's Federal and State funding, and whether to delay adopting the policy included in this Special Update, you are strongly encouraged to consult with your Board legal counsel.

Book	Policy Manual
Section	Pending Policy Committee Review
Title	Special Update - Title IX - June 2024 New NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES
Code	po2264
Status	

### **New Policy - Special Update - Title IX**

#### **2264 - NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES**

This policy pertains to sex discrimination, including sex-based harassment, which occurs on or after August 1, 2024. Allegations of sex-based harassment, that occur on or before July 31, 2024, shall be addressed pursuant to Policy 2266 (X) and AG 2266 [END OF OPTION]. Throughout this policy, unless expressly stated otherwise, reference to "Title IX" includes and incorporates the 2024 Title IX regulations (also known as the "2024 Final Rule"). The Title IX regulations are found at 34 CFR Part 106. References solely to Title IX (20 U.S.C. §§ 1681 – 1688) are denoted as "Title IX (Statute)." In this policy, unless the context otherwise requires, words importing the singular include the plural and vice versa.

**[DRAFTING NOTE: The 2024 Final Rule serves to "clarify the scope and application of Title IX and the obligations of recipients of Federal financial assistance from the United States Department of Education ["ED"]...to provide an educational environment free from discrimination on the basis of sex, including through responding to incidents of sex discrimination." The 2024 Final Rule stresses – in its Supplementary Information section (i.e., "Preamble") – that ED is responsible for "fully [enforcing] Title IX's nondiscrimination mandate."**

The 2024 Title IX regulations are effective August 1, 2024. As such, they apply *only* to sex discrimination that allegedly occurred on or after August 1, 2024. With respect to sex discrimination that allegedly occurred prior to August 1, 2024, regardless of when the alleged sex discrimination was reported, ED has stated that it will "evaluate a recipient's compliance against the Title IX statute and the Title IX regulations in place at the time that the alleged sex discrimination occurred." The 2020 Title IX regulations (effective 8/14/2020) focus on effectuating Title IX's prohibition against sex discrimination by requiring recipients to address sexual harassment as a form of sex discrimination in education programs or activities. The 2020 Title IX regulations obligate recipients to respond promptly and supportively to persons alleged to be victimized by sexual harassment, resolve allegations of sexual harassment promptly and accurately under a predictable, fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment, and effectively implement remedies for victims. The 2020 Title IX regulations do not provide procedures for addressing claims of sex discrimination in a recipient's education program or activity that are unrelated to sexual harassment. As such, ED states in the Preamble to the 2024 Title IX regulations that "some reports regarding sex discrimination occurring in a recipient's education program or activity may be handled under [the 2024 Title IX regulations] while others will be addressed under the requirements of the [2020 Title IX regulations]." (emphasis added) Presumably, the "will" relates to reports of sexual harassment (or "sex-based harassment" as defined in the 2024 Title IX regulations) that allegedly occurred prior to 8/1/2024, and the "may" refers to reports of alleged sex discrimination that occurred prior to 8/1/2024 that involve non-sexual harassment related violations of Title IX (Statute).

Since a recipient is not required to use the grievance procedures outlined in the 2024 Title IX regulations (and this policy) to investigate, address, and remedy alleged violations of Title IX – not involving sex-based harassment - that occurred before 8/1/2024 in the school district's education programs or activities (again, allegations of sexual harassment that involve conduct that occurred before 8/1/2024 must be addressed pursuant to the grievance procedures delineated in Policy 2266 and AG 2266), the Title IX Coordinator is afforded broad discretion to determine how best to address in a prompt, effective and equitable manner such Title IX violations.

The language quoted in this DRAFTING NOTE is found at 89 Fed. Reg. 33,841 (Apr. 29, 2024).

For more information concerning the use of this policy and the grievance procedures set forth herein, as opposed to Policy 2266 and the grievance procedures contained in it, refer to the first few paragraphs of the Grievance Procedures section located below.

Neola recommends the Board consult with its Legal Counsel relating to any questions it may have concerning application and implementation of this policy and its corresponding administrative guideline, as compared to Policy 2266 and AG 2266.]

### **NONDISCRIMINATION**

#### **Overview:**

The Board of Education of the ~~the \_\_\_\_\_ School~~ Lake Orion Community Schools District (hereinafter referred to as "the Board" or "the District") does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX, including in admission and employment.

**[DRAFTING NOTE: For purposes of the 2024 Title IX regulations, the term "admission" refers to admission to postsecondary institutions (i.e., institutions of graduate higher education, institutions of undergraduate higher education, institutions of professional education, and institutions of vocational education). If a K-12 school does not operate a vocational program (e.g., a school or institution that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study), the K-12 school does not have to include "admission and" in the preceding sentence (and where that phrase is used throughout this policy); Neola, however, recommends that boards include it because all K-12 schools "enroll" students and often the term "enroll" is viewed as synonymous with the term "admit." Further, K-12 schools cannot discriminate when enrolling students into the education programs or activities that they operate, so it seems reasonable to include the term "admission." Additionally, many districts operate adult-based vocational programs and/or have students dual-enrolled in post-secondary institutions – e.g., through Michigan's Dual Enrollment – and/or youth apprenticeship programs, so it makes sense to include "admission" even though those postsecondary institutions will have their own Title IX nondiscrimination policies and grievance procedures. If a student enrolled in/admitted to one of these programs notifies the District that the**

student was allegedly subjected to sex discrimination during/through the student's participation in the program, the Title IX Coordinator should consult with the Board's Legal Counsel regarding the District's responsibility to implement the District's grievance procedures to address the allegations of sex discrimination and provide supportive measures. The Title IX Coordinator should also contact and coordinate with the postsecondary institution's Title IX Coordinator concerning the matter.]

Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

[DRAFTING NOTE: Shortly after the 2024 Final Rule was released, a number of States filed lawsuits to stop implementation of the new regulations. As of May 23, 2024, no court has issued an injunction or preliminary restraining order to prevent the 2024 Final Rule from going into effect on August 1, 2024. Neola is monitoring the litigation across the country and will notify its clients if any court action limits or prevents Michigan school districts from implementing the 2024 Title IX regulations and, in turn, replacement Policy 2264 and replacement AG 2264.

Unlike a couple of years ago when several States challenged in court a legal guidance document that ED released interpreting the U.S. Supreme Court's Bostock decision (*Bostock v. Clayton County*, 590 U.S. (2020)), as applying to Title IX and therefore protecting individuals from discrimination based on their sexual orientation or gender identity, the 2024 Title IX regulations "carry the force and effect of law" as a result of ED going through the notice and comment rulemaking process prior to promulgating them.

While the pending lawsuits each seek to void, cancel, or otherwise block ED from implementing the 2024 Final Rule, they each present slightly different bases for challenging the 2024 Title IX regulations. All of them, however, express an underlying or primary concern related to an alleged expansion of the term "sex" to include sexual orientation and gender identity. While these plaintiffs, to date, contend the 2020 Bostock decision – which involved Title VII – does not apply to Title IX, Neola has interpreted "sex" to include "sexual orientation and gender identity" for a number of years pre-dating Bostock based on applicable Sixth Circuit case law (see *Dodd v. U.S. Dept. of Education*, 845 F.3d 217 (6th Cir. 2016) (holding that discrimination against transgender students likely constitutes sex discrimination under Title IX of the Education Amendments Act of 1972 and the Equal Protection Clause of the U.S. Constitution); since that time, even more Circuit courts have upheld such an interpretation (e.g., *Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (7th Cir. 2017) (holding that discrimination against transgender students constitutes sex discrimination under Title IX of the Education Amendments Act of 1972 and the Equal Protection Clause of the U.S. Constitution). In fact, original Policy 2266, which Neola developed in 2020 following ED releasing the 2020 Title IX regulations, expressly provides that "sex" includes "sexual orientation and gender identity").

Other concerns raised in the lawsuits primarily deal with aspects of the rules that have a more significant role in the postsecondary setting as opposed to the K-12 education environment; namely, the use of a single investigator/decisionmaker model, and a purported reduction in the due process rights afforded to the accused (i.e., whether the respondent is entitled to a live hearing and the ability to cross-examine parties and witnesses prior to a decisionmaker rendering a determination of responsibility – which is something that is an option for K-12 schools under the 2020 Title IX regulations but was rarely selected.]

The Board is committed to maintaining an education and work environment that is free from sex discrimination (including sex-based harassment), responding promptly and effectively when it has knowledge of conduct that reasonably may constitute sex discrimination, and addressing sex discrimination in its education program or activity. Persons who commit sex-based harassment are subject to the full range of disciplinary sanctions set forth in this policy. The Board will provide persons who have experienced sex-based harassment ongoing remedies as reasonably necessary to restore or preserve access to the District's education program or activity.

## KEY DEFINITIONS

Words used in this policy shall have those meanings specified herein; words not defined herein shall be construed according to their plain and ordinary meanings.

**Complainant** means:

- A. a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
- B. a person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX 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** means: 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.

## [OPTIONAL LANGUAGE]

~~[ ] Confidential employee means:~~

- ~~A. a Board employee whose communications are privileged under Federal or State law; or~~

~~The employee's confidential status, for purposes of this policy, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies.~~

- ~~B. a Board employee whom the Board has designated as confidential under this policy for the purpose of providing services to persons related to sex discrimination;~~

~~If the employee also has a duty not associated with providing these services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing these services.~~

- ~~C. the Board designates individuals ( ) assigned to/holding the following positions ( ) with the following Job Titles [END OF OPTIONS] to be confidential employees for purposes of this policy:~~

- ~~1. ( ) school counselor;~~
- ~~2. ( ) social worker;~~

3. ~~( ) school psychologist;~~
4. ~~( ) school nurse;~~
5. ~~( ) \_\_\_\_\_;~~
6. ~~( ) \_\_\_\_\_;~~

**[DRAFTING NOTE:**

A. Neola does not recommend the Board include this definition or designate “confidential employees” based on:

1. the confusion that may result from designating a confidential employee(s) – in particular, Board-designated confidential employees will have different responsibilities as compared to ALL other Board employees when it comes to the actions they must take if a person notifies them of alleged sex discrimination;
2. they require additional training concerning the responsibilities mentioned in the preceding paragraph, which are different from the responsibilities required of ALL other Board employees; and
3. students or persons who are acting on their behalf may “lose” the “confidentiality” they are seeking if they communicate their concerns about alleged sex discrimination to a person who is not actually a confidential employee – it is safer for students, and those acting on their behalf, to operate on the assumption that if they tell a Board employee about alleged sex discrimination that the Board employee will report it to the Title IX Coordinator.

B. Unlike the postsecondary environment, there is little anticipated benefit in an elementary/secondary school setting to designating confidential employees. A person acting on behalf of a student could contact the Title IX Coordinator to obtain clarification about the Title IX grievance procedures, informal resolution process, and other options available to their child (e.g., supportive measures) without releasing any information or specifically reporting alleged sex discrimination, so there is not much gained by having the person instead speak with a confidential employee who would tell them essentially the same things.

C. Before the Board designates a confidential employee(s), it should consult with its Legal Counsel.

D. If the Board decides to designate one (1) or more confidential employees, Neola suggests that it does so by Position, Title, or Office, and not the person’s name, for the reasons discussed below with respect to why it is preferable to only list the Job Title of the Title IX Coordinator in the policy, as opposed to both the Name and Title – i.e., so the Board does not have to act to amend the policy each time a different person is employed in the designated position.]

**[END OPTIONAL LANGUAGE]**

**Day(s):** Unless expressly stated otherwise, the term “day” or “days” as used in this policy means business day(s) (i.e., a day(s) that the Board office is open for normal operating hours, Monday – Friday, excluding State-recognized holidays).

**Disciplinary sanctions** means: consequences imposed on a respondent following a determination under Title IX that the respondent violated the Board’s prohibition on sex discrimination.

**Education program or activity** refers to: all the District’s operations including, but not limited to, in-person and online/remote educational instruction, employment, extracurricular activities, athletics, performances, and community engagement and outreach programs. The term applies to all activity that occurs on school grounds or on other property owned or occupied by the Board. It also includes events and circumstances that take place off school property/grounds but over which the District asserts disciplinary authority.

**Eligible Student** means: a student who has reached eighteen (18) years of age or is attending an institution of postsecondary education. **[DRAFTING NOTE: This definition is derived from, and consistent with, the corresponding definition from the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g (see 20 U.S.C. 1232g(a)(4) and (d)) and its implementing regulations (see 34 C.F.R. § 99.3).]**

**Exculpatory evidence** means: evidence that is favorable to a respondent because it helps excuse, justify, or absolve a respondent of alleged wrongdoing and tends to establish a respondent did not engage in sex discrimination.

**Inculpatory evidence** means: evidence that links a respondent to alleged wrongdoing and tends to establish a respondent engaged in sex discrimination (i.e., has culpability).

**Parental status** means: the status of a person who, with respect to another person who is under the age of eighteen (18) or who is eighteen (18) or older but is incapable of self-care because of a physical or mental disability, is:

- A. a biological parent;
- B. an adoptive parent;
- C. a foster parent;
- D. a stepparent;
- E. a legal custodian or guardian;
- F. in loco parentis with respect to such a person; or
- G. actively seeking legal custody, guardianship, visitation, or adoption of such a person.

**Party** means: a complainant or respondent.

**Peer retaliation** means: retaliation by a student against another student.

**Pregnancy or related conditions** means:

- 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 of pregnancy, lactation, or related medical conditions.

**Relevant** means: related to the allegations of sex discrimination under investigation as part of the Board's 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** means: 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 the District determines that sex discrimination occurred.

**Respondent** means: a person who is alleged to have violated the Board's prohibition on sex discrimination.

**Retaliation** means: intimidation, threats, coercion, or discrimination against any person by the District, a student, a Board employee, or any other person authorized by the Board 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 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 2024 Title IX regulations.

**Sex-based harassment** prohibited under this policy and the 2024 Title IX regulations is 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 Board to provide an aid, benefit, or service under the District's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

**OR**

- 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 District'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:

- 1. the degree to which the conduct affected the complainant's ability to access the District's education program or activity;
- 2. the type, frequency, and duration of the conduct;
- 3. 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;
- 4. the location of the conduct and the context in which the conduct occurred; and
- 5. other sex-based harassment in the District's education program or activity.

**OR**

- C. Specific offenses.

- 1. Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
- 2. Dating violence meaning violence committed by a person:
  - a. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - b. where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - 1. the length of the relationship;
    - 2. the type of relationship; and
    - 3. the frequency of interaction between the persons involved in the relationship.
- 3. Domestic violence meaning felony or misdemeanor crimes committed by a person who:
  - a. is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction in which the District is located, or a person similarly situated to a spouse of the victim;
  - b. is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
  - c. shares a child in common with the victim; or
  - d. commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the applicable jurisdiction.



4. Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- a. fear for the person's safety or the safety of others; or
- b. suffer substantial emotional distress.

**Student** means: a person eligible to enroll in, attend, or participate in an elementary (including preschool) or secondary school in the District and who is enrolled in, attending, or participating in, or is seeking/attempting to enroll in, attend, or participate, in the District's education program or activity.

**Student with a disability** means: a student who is an individual with a disability as defined under Section 504 of the Rehabilitation Act of 1973, as amended ("Section 504"), or a child with a disability as defined under the Individuals with Disabilities Education Improvement Act ("IDEA").

**Supportive measures** means: 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 District's education program or activity, including measures that are designed to protect the safety of the parties or the District's educational environment; or
- B. provide support during the Board's grievance procedures or an informal resolution process.

#### **Parental, Family, or Marital Status**

The Board will not adopt or apply any policy, practice, or procedure concerning a student's current, potential, or past parental, family, or marital status that treats such student differently on the basis of sex.

#### **Pregnancy or Related Conditions**

##### **Students:**

The Board prohibits discrimination in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions. **(X)** The Board will permit a student, based on pregnancy or related conditions, to voluntarily participate in a separate portion of the District's education program or activity provided the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions. **[END OF OPTION]** A student who is pregnant or experiencing related conditions shall receive comparable treatment to those with temporary medical conditions. **(X)** In other words, to the extent not otherwise addressed above, the Board will treat pregnancy or related conditions in the same manner and under the same policies as any other medical condition with respect to any medical or hospital benefit, service, plan, or policy the Board administers, operates, offers, or participates in with respect to students admitted to the District's education program or activity. **[END OF OPTION]** **[DRAFTING NOTE: This last sentence is consistent with the content of the 2024 Title IX regulations, however, on its face, it appears to be more applicable to postsecondary institutions as compared to K-12 schools; hence, Neola suggests the Board determine for itself whether to include it in this policy.]**

The District will not require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in the District's class, program, or extracurricular activity unless:

- A. the certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;
- B. the District requires such certification of all students participating in the class, program, or extracurricular activity; and
- C. the information obtained is not used as a basis for discrimination prohibited by Title IX or this Policy.

#### **District's Responsibilities with Respect to a Student's Pregnancy or Related Conditions**

When a Board employee is informed of a student's pregnancy or related conditions by the student or a person who has a legal right to act on behalf of the student, the employee shall promptly provide that person with the Title IX Coordinator's contact information and inform that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the District's education program or activity, unless the employee reasonably believes the Title IX Coordinator has already been notified.

Once a student, or a person who has a legal right to act on behalf of the student, notifies the Title IX Coordinator of the student's pregnancy or related conditions, the Title IX Coordinator shall promptly take the following specific actions to effectively prevent sex discrimination and ensure equal access to the District's education program or activity:

- A. Inform the student and, if applicable, the person who notified the Title IX Coordinator of the District's obligations to:
  1. prohibit sex discrimination under this policy, including sex-based harassment;
  2. provide the student with the option of reasonable modifications to the Board's policies, practices, or procedures because of pregnancy or related conditions;
  3. allow access, on a voluntary basis, to any separate and comparable portion of the District's education program or activity;
  4. allow a voluntary leave of absence;
  5. provide lactation space; and
  6. maintain grievance procedures that provide for the prompt and equitable resolution of complaints of sex discrimination, including sex-based harassment.
- B. Provide the student with voluntary reasonable modifications to the Board's policies, practices, or procedures because of pregnancy or related conditions.

C. Allow the student to take a voluntary leave of absence from the District's education program or activity to cover, at minimum, the period of time deemed medically necessary by the student's licensed healthcare provider. To the extent that a Board maintains a leave policy for students that allows a greater period of time than the medically necessary period, the Board shall permit the student to take leave under that policy instead if the student so chooses. When the student returns to the District's education program or activity, the student will be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the leave began.

D. Provide lactation space, which must be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.

See Policy 5751 – Parental-Married Status of Students (X) and Administrative Guideline 5751 – Pregnancy [END OF OPTION].

**Employees:**

The Board will not adopt or implement any policy, practice, or procedure, or take any employment action, on the basis of sex:

- A. concerning the current, potential, or past parental, family, or marital status of an employee or applicant for employment, which treats persons differently; or
- B. that is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

The Board also will not make a pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is a "Miss or Mrs."

Similarly, the Board will treat pregnancy or related conditions as any other temporary medical conditions for all job-related purposes, including commencement, duration, and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; and reinstatement; and under any fringe benefit offered to employees by virtue of employment.

If an employee has insufficient leave or accrued employment time to qualify for leave under the Board's leave policy, the Board will treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

The Board will provide reasonable break time for an employee to express breast milk or breastfeed as needed and will provide the employee with access to a lactation space, which must be a space other than a bathroom that is clean, shielded from view, free from intrusion from others, and may be used by an employee for expressing breast milk or breastfeeding as needed. See Board Policy 6700 – Fair Labor Standards Act.

**TITLE IX COORDINATOR(S)**

**[DRAFTING NOTES:**

- A. **Neola suggests the Board appoint both a male and a female Title IX Coordinator; however, if the Board appoints more than one (1) Title IX Coordinator, it must designate one (1) of the Title IX Coordinators to retain ultimate oversight over the assigned responsibilities and ensure the Board's consistent compliance with its responsibilities under Title IX. Alternatively, the Board could appoint a Title IX Coordinator and one (1) or more persons to assist the Title IX Coordinator with performance of the responsibilities identified in this policy and the 2024 Title IX regulations. Often the persons designated to assist a Title IX Coordinator are called: Deputy or Assistant Title IX Coordinator, or Title IX Administrator, or Title IX Compliance Officer. If the Board elects this alternative approach, it would only designate a Title IX Coordinator for purposes of this policy, but it would designate the other positions through its AG. The persons in the alternative support roles will need to be trained in the same manner as the Title IX Coordinator (see AG 2264).**
- B. **The Board must list either the Name(s) or Title(s) of the Title IX Coordinator(s); while the Board may list both the Name(s) and Title(s), Neola suggests that the Board only list the Title(s) in this policy (so the Board does not need to revise/amend the policy whenever there is a change in the actual person(s) holding the designated position(s)), but list both the Name(s) and Title(s) in the requisite notices/postings (e.g., website) and publications (e.g., handbooks). The District will also need to decide whether to list the Name(s) and Title(s), or just the Title(s), in Administrative Guideline 2264 if the District elects to identify the Title IX Coordinator in the AG (see DRAFTING NOTE in the AG; again, if the District lists the Name(s) and Title(s), it will need to remember to update the AG whenever there is a change in the actual person(s) holding the designated position(s). No matter what, the Board will need to amend its policy and update its AG, requisite notices/postings, and publications, whenever it changes the Title of the position(s) designated to serve as the Title IX Coordinator(s).**
- C. **Reminder: Whenever a new person begins to serve as the Title IX Coordinator (or in a support role to the Title IX Coordinator), the District needs to make sure the new person is appropriately trained, in a timely manner, to fulfill the responsibilities of the Title IX Coordinator position as specified the 2024 Title IX regulations and AG 2264.]**

The Board designates and authorizes the following individual(s) to coordinate its efforts to comply with the Board's responsibilities under Title IX:

\_\_\_\_\_  
{Name and/or School District Title}

\_\_\_\_\_  
{Office Address}

\_\_\_\_\_  
{Email Address}

\_\_\_\_\_  
{Telephone Number}

Adam Weldon

Assistant Superintendent of Human Resources

248-693-5400

315 N. Lapeer Street

Lake Orion, MI 48362

adam.weldon@lok12.org

[DRAFTING NOTE: The District may want to create a static (i.e., fixed) Title IX Coordinator-specific email address and phone number that will not change when the person(s) and/or position(s) designated to be the Title IX Coordinator(s) change(s) – e.g., tixcoordinator@(insert District’s domain) – which the Technology Director/Department can program to be forwarded to the actual individual(s) serving as the Title IX Coordinator(s) at any given time. Likewise, the District may want to establish a static Telephone Number for the position of Title IX Coordinator that can be forwarded to, and accessed by, the actual person(s) serving in the Title IX Coordinator position(s) at any given time. These two (2) steps will help reduce the information that needs to be updated in policy, AG, and/or the requisite notices/postings and publications when changes occur to the specific person(s)/position(s) designated to serve as the Title IX Coordinator(s).]

[DRAFTING NOTE: Complete the following information if the Board appoints more than one (1) Title IX Coordinator.]

**X ] [DESIGNATION OF A SECOND TITLE IX COORDINATOR]**

\_\_\_\_\_  
(Name and/or School District Title)

\_\_\_\_\_  
(Office Address)

\_\_\_\_\_  
(Email Address)

\_\_\_\_\_  
(Telephone Number)

Heidi Mercer

Assistant Superintendent of Teaching and Learning

248-693-5400

315 N. Lapeer Street

Lake Orion, MI 48362

heidi.mercer@lok12.org

[END OF OPTION]

[DRAFTING NOTE: Select the following option if the Board designates more than one (1) Title IX Coordinator.]

**X ]** The Board designates \_\_\_\_\_ Adam Weldon [DRAFTING NOTE: Insert Name and/or Title of the Title IX Coordinator who is ultimately responsible for the District’s compliance with its responsibilities under Title IX] as the coordinator who is ultimately responsible for oversight over the Board’s compliance with its responsibilities under Title IX. [END OF OPTION]

**X ]** The Title IX Coordinator may delegate specific duties to one (1) or more designees. [END OF OPTION]

[DRAFTING NOTE: The Board may want to select the following option when the Superintendent is not the District’s Title IX Coordinator. While Neola recognizes that this may not always be possible, it may be preferable to have the Title IX Coordinator be someone other than the Superintendent because then – if the Title IX Coordinator serves as the investigator and decisionmaker – the Superintendent can serve as the appeal decisionmaker or the facilitator for the informal resolution process.]

**X ]** The Title IX Coordinator shall report directly to the Superintendent except when the Superintendent is a party to a complaint (i.e., either the complainant or the respondent). Under such circumstances, the Title IX Coordinator shall report directly to [SELECT ONE OF THE FOLLOWING] ( ) the Board President (X ) the Board’s Legal Counsel ( ) \_\_\_\_\_ [OTHER] [END OF OPTIONS] until the matter in which the Superintendent is a party is concluded. [END OF OPTION]

Questions about this policy and Policy 2266 (X ) and AG 2264 and AG 2266 [END OF OPTION] should be directed to the Title IX Coordinator.

The Title IX Coordinator shall monitor the District’s education programs and activities for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX, and take steps reasonably calculated to address such barriers.

~~[ ] The Title IX Coordinator is responsible for notifying all participants in the District’s education program or activity of how to contact its confidential employees. [END OF OPTION]~~

[DRAFTING NOTE:

A. For the reasons discussed in the DRAFTING NOTE that accompanies the Definition of “confidential employee,” Neola does not recommend the Board designate confidential employee(s), especially for their K-12 programs.

B. If, however, the Board designates one or more confidential employees, it needs to select this OPTION.

**C. The District has flexibility and discretion to decide what information to provide (e.g., whether to identify a confidential employee by Name, Title, Office, or Telephone Number (this presumably would be a static number that would auto-forward to the actual person serving as a confidential employee)). The District just needs to provide sufficient information for participants to be able to contact the confidential employee(s).]**

#### **Notice of Nondiscrimination**

The Superintendent shall provide a notice of nondiscrimination to students, parents, guardians, or other authorized legal representatives of elementary and secondary students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the Board. Specifically, the Superintendent shall post the notice of discrimination on the District's website and in each handbook, catalog, announcement, bulletin, and application form that it makes available to the persons listed above, or which are otherwise used in connection with the recruitment of students or employees. **(X)** See AG 2264 and Form 2264F1 — Notice and Statement of Nondiscrimination. **[END OF OPTION]**

#### **GRIEVANCE PROCEDURES**

##### **Overview:**

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

These grievance procedures shall be used for all complaints of sex discrimination, including sex-based harassment, involving conduct alleged to have occurred on or after August 1, 2024. These grievance procedures also may be used, at the discretion of the Title IX Coordinator, to investigate, address, and remedy (as necessary) conduct alleged to have occurred before August 1, 2024, that does not involve sex-based harassment, but some other form of sex discrimination prohibited by Title IX (Statute) – e.g., claims of unequal athletic opportunities, admissions discrimination, discrimination in courses or academic programs (i.e., excluding students from certain classes or programs based on their sex), pregnancy discrimination, unequal treatment based on parental, family, or marital status, discrimination in employment (including in hiring, promotion, and compensation), and retaliation. If the Title IX Coordinator elects not to use these grievance procedures to investigate and resolve such claims, the Title IX Coordinator will still need to implement some procedures to assess – in a prompt, effective, and equitable manner – whether Title IX (Statute) was violated, and, if it was, how best to end the sex discrimination in the District's education program or activity, prevent its recurrence, and remedy its effects.

**[DRAFTING NOTE: Title VII of the Civil Rights Act of 1964 ("Title VII") and Title IX are both Federal laws that prohibit discrimination in employment, but they differ in their focus. Title VII prohibits employment discrimination based on race, color, religion, sex, or national origin, and applies to employers with fifteen (15) or more employees. Title IX, on the other hand, specifically prohibits discrimination on the basis of sex in education programs and activities that receive Federal financial assistance, including employment within those institutions. While both laws aim to prevent sex-based discrimination in the workplace, Title VII applies more broadly to various types of employers, whereas Title IX is limited to educational institutions receiving Federal funds. Ultimately, both laws aim to ensure equal employment opportunities and protect individuals from discrimination. When a Title IX Coordinator receives a complaint or notification of alleged misconduct, involving sex discrimination (in particular, sex-based harassment) that involves an employee complainant and an employee respondent, the Title IX Coordinator may want to consult with the Board's Legal Counsel concerning which law – it may be both – the District will need to comply with when investigating the allegations.]**

Reports and Formal Complaints of "Sexual Harassment" (as defined in Policy 2266) involving conduct alleged to have occurred prior to August 1, 2024, are subject to the grievance procedures outlined in Policy 2266.

Under all circumstances, the Title IX Coordinator shall offer and coordinate supportive measures, as appropriate, in accordance with this policy **(X)** and AG 2264 **[END OF OPTION]**, or Policy 2266 **(X)** and AG 2266 **[END OF OPTION]**, if the Report or Formal Complaint involves "Sexual Harassment" alleged to have occurred prior to August 1, 2024.

If the conduct giving rise to a report or complaint of sex discrimination is alleged to have occurred both before **and** after August 1, 2024 (i.e., is part of a pattern of sex discrimination), the Title IX Coordinator shall determine **(X)**, after consulting with the Board's Legal Counsel, **[END OF OPTION]** whether to use the grievance procedures contained in this policy or the grievance procedures contained in Policy 2266. The Title IX Coordinator will notify, in writing, the parties of the determination and the rationale for it. Under no circumstances, however, will a party be denied the due process to which the party is entitled based on the U.S. Department of Education-issued regulations in effect at the time the conduct alleged to violate Title IX (Statute) took place. **(X)** Nothing herein shall prevent the Title IX Coordinator from using a hybrid grievance procedure that contains aspects of the grievance procedures contained in both this policy and Policy 2266, so that the parties receive all of the due process to which they are entitled. **[END OF OPTION]**

##### **Complaints:**

The following people may make a complaint of sex discrimination – i.e., request that the District investigate and make a determination about whether sex discrimination as prohibited under Title IX occurred:

A. a "complainant," which includes:

1. a student or employee of the District who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX;  
or
2. 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;

B. a parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant;

C. the District's Title IX Coordinator.

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 who was subjected to the sex-based harassment, or if the Title IX Coordinator initiates a complaint consistent with the requirements of the 2024 Title IX regulations **(X)**, which are detailed in AG 2264 **[END OF OPTION]**.

**[DRAFTING NOTE: This paragraph emphasizes that in order for a person to file a complaint of sex-based harassment, the person has to have been subjected to the alleged misconduct directly, or be a person who has a legal right to act on behalf of the person who was subjected to the alleged misconduct. This is consistent with the prior paragraph where the complainant is identified as a student or employee who was "subjected to conduct that could constitute sex discrimination under Title IX." The following paragraph, on the other hand, expands who can file a complaint – when the alleged sex discrimination does not involve sex-based harassment – to persons who are aware of the alleged sex discrimination, even if that person was not directly affected by or subject to the alleged sex discrimination.]**

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.

The District may consolidate complaints of sex discrimination against more than one (1) respondent, or by more than one (1) complainant against one (1) or more respondents, or by one (1) party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one (1) complainant or more than one (1) respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

**Basic Requirements:**

The District will treat complainants and respondents equitably.

All persons involved with implementing the grievance procedures and any other aspects of Policy 2264, including the Title IX Coordinator, the investigator, the decisionmaker, [and the appeal decisionmaker, (X) ] and the facilitator of the informal resolution process, [END OF OPTION] shall be free from any conflicts of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

The Title IX Coordinator may serve simultaneously as an investigator and/or a decisionmaker. [END OF OPTION] **[DRAFTING NOTE: Neola recommends the Board select this OPTION; note it is "may" (i.e., optional) so the Title IX Coordinator can decide when to serve in both roles and when to designate one or more persons to perform those responsibilities in a given case.]**

If the Title IX Coordinator does not intend to serve as the investigator and decisionmaker in a specific case, the Title IX Coordinator shall designate one (1) or more administrators who are appropriately trained to serve in the role. Likewise, the Title IX Coordinator shall appoint an appeal decisionmaker when an appeal is filed.

In circumstances when the Title IX Coordinator and trained administrators do not have time/capacity to serve, or are prevented due to a conflict of interest, bias, or partiality, or other reasons that impair the Title IX Coordinator and other trained administrators from serving as an investigator and/or decisionmaker in a specific case, the Title IX Coordinator shall (X) , in consultation with (X) and approval of [END OF OPTION] the Superintendent or ( ) Board ( ) Board President (as appropriate), [END OF OPTION] secure one (1) or more independent third parties to serve as the investigator and/or decisionmaker. Similarly, the Title IX Coordinator has authority (X) , in consultation with (X) and approval of [END OF OPTION] the Superintendent or ( ) Board ( ) Board President (as appropriate), [END OF OPTION] to secure an independent third party to serve as the appeal decisionmaker.

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.

Under ordinary circumstances, the Board expects to complete the major stages of the grievance procedures within the timeframe specified below:

- A. **Evaluation** – The Title IX Coordinator will determine whether to dismiss a complaint or investigate it within ten (10) [INSERT # OF DAYS] days of receiving the complaint. **[DRAFTING NOTE: Neola recommends that the evaluation stage be completed within ten (10) days of the Title IX Coordinator receiving notice of the complaint.]**
- B. **Investigation** – The Title IX Coordinator, or designated investigator, shall ordinarily complete the investigation (i.e., collect relevant evidence that is not otherwise impermissible) within thirty (30) [INSERT # OF DAYS] days of the Title IX Coordinator determining the charges require investigation. If, however, the Title IX Coordinator, or designated investigator, determines that the investigation is going to take longer, the Title IX Coordinator will so notify the parties (X) and the Superintendent [END OF OPTION] and will thereafter keep the parties ( ) and the Superintendent [END OF OPTION] informed of the status of the matter on a regular [INSERT TIME PERIOD – E.G., BIWEEKLY OR REGULAR] basis. **[DRAFTING NOTE: Recognizing ED wants investigations to be completed in a prompt and equitable manner, and therefore provided elementary and secondary schools with greater flexibility when it comes to completing an investigation than is afforded to them under the 2020 Title IX regulations, Neola recommends a school district typically complete investigations within thirty (30) days.]** Once the Title IX Coordinator, or designated investigator, provides the parties with "access" to either the relevant and not otherwise impermissible evidence and/or an accurate description of the evidence, the parties will have five (5) [INSERT # OF DAYS] days to respond to the evidence or the description of the evidence unless the Title IX Coordinator approves a party's written request for more time. If the Title IX Coordinator approves such a request, both parties will be afforded an equal amount of time to submit their response. **[DRAFTING NOTE: Neola recommends the Board limits the amount of time the parties have to review the evidence/description of the evidence to five (5) days so the matter can proceed in a timely manner to Determination.]**
- C. **Determination** – After the parties either submit responses to the evidence/description of the evidence, or the deadline for submitting such responses expires, the Title IX Coordinator, or designated decisionmaker, will consider the relevant and otherwise not impermissible evidence and issue a determination as to whether sex discrimination occurred. The determination shall be issued within ten (10) [INSERT # OF DAYS] days of the deadline for the parties to submit responses to the evidence/description of the evidence (X) unless the ( ) Superintendent (X) Title IX Coordinator [END OF OPTION] approves an extension of time, which must be communicated in writing to the parties [END OF OPTION]. **[DRAFTING NOTE: Neola recommends the Determination ordinarily be issued within ten (10) days of the date when the parties have to submit their responses to the evidence/description of the evidence. If the decisionmaker is someone other than the Title IX Coordinator, upon written request from the decisionmaker, the Title IX Coordinator should be permitted to approve a reasonable extension of time for the Determination to be issued. If the Title IX Coordinator is the decisionmaker: upon written request from the Title IX Coordinator, the Superintendent should be permitted to approve a reasonable extension of time for the Determination to be issued. In either situation, the administrator granting the extension should communicate to the parties the new deadline along with a rationale for the extension.]**

D. **Appeal** – A party filing an appeal of the Title IX Coordinator’s decision to dismiss a complaint (  ), or the Determination, [END OF OPTION] must do so within five (5) [INSERT # OF DAYS] days of receiving the Dismissal (  ) or Determination [END OF OPTION]. **DRAFTING NOTE: Neola recommends the Board allow limited appeals based on the Determination. See DRAFTING NOTE below in the appeal section, which further discusses when a board “has” to allow appeals, as opposed to under which circumstances a board could decide not to allow appeals on the Determination.”]**

The Title IX Coordinator, or the Superintendent if the Title IX Coordinator is the individual requesting an extension, may approve reasonable extensions of the preceding timeframes on a case-by-case basis for good cause with notice to the parties.

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; consulting with their family members, confidential resources, or advisors; or otherwise preparing for or participating in the grievance procedures. The parties shall not engage in retaliation, including against witnesses.

The Title IX Coordinator, or designated decisionmaker, shall objectively evaluate all evidence that is relevant and not otherwise impermissible — including both inculpatory and exculpatory evidence. Credibility determinations shall not be based on a person’s status as a complainant, respondent, or witness.

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:

- A. evidence that is protected under a privilege recognized by Federal or State law (  ) or evidence provided to a confidential employee [END OF OPTION], unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality; [DRAFTING NOTE: The Board should only select the preceding OPTION if it has designated confidential employee(s).]
- B. 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 that party’s or witness’s voluntary, written consent for use in its grievance procedures; and
- C. 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 shall not by itself demonstrate or imply the complainant’s consent to the alleged sex-based harassment or preclude a determination that sex-based harassment occurred.

#### Notice of Allegations:

Upon initiation of the Board’s grievance procedures, the Title IX Coordinator shall notify the parties of the following:

- A. the Board’s Title IX grievance procedures (  ) and informal resolution process [END OF OPTIONS]; [DRAFTING NOTE: Neola encourages the Board to include an informal resolution process.]
- B. sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- C. retaliation is prohibited; and
- D. the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. If the Title IX Coordinator, or designated investigator, provides the parties with a description of the evidence, any party may request access to the relevant and not otherwise impermissible evidence. The Title IX Coordinator will provide the requesting party with the relevant and not otherwise impermissible evidence in a timely manner.

Should the Title IX Coordinator decide, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the Title IX Coordinator will provide a supplemental written notice describing the additional allegations to be investigated.

#### Dismissal of a Complaint:

The Title IX Coordinator may dismiss a complaint of sex discrimination if:

- A. the District is unable to identify the respondent after taking reasonable steps to do so;
- B. the respondent is not participating in the District’s education program or activity and is not employed by the Board;
- C. the complainant voluntarily withdraws any or all 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 IX even if proven; or
- D. 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 Title IX Coordinator will make reasonable efforts to clarify the allegations with the complainant.

**[DRAFTING NOTE: While the 2024 Title IX regulations do not require notification of the dismissal to be provided in writing, Neola recommends that the Title IX Coordinator document the dismissal in writing – i.e., Neola recommends the board selects Option 1.]**

**[SELECT OPTION 1 OR OPTION 2]**

**[OPTION 1]**

Upon dismissal, the Title IX Coordinator will promptly notify, in writing, the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the Title IX Coordinator will also simultaneously notify, in writing, the respondent of the dismissal and the basis for the dismissal.

**[END OF OPTION 1]**

[OR]

[OPTION 2]

~~Upon dismissal, the Title IX Coordinator 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 Title IX Coordinator 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.~~

[END OF OPTION 2]

The Title IX Coordinator 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 Title IX Coordinator will also notify the respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- A. procedural irregularity that would change the outcome;
- B. new evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- C. 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 Title IX Coordinator will:

- A. notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- B. implement appeal procedures equally for the parties;
- C. ensure that the appeal decisionmaker did not take part in an investigation of the allegations or dismissal of the complaint;
- D. ensure that the appeal decisionmaker has been trained consistent with the 2024 Title IX regulations  See AG 2264 [END OF OPTION];
- E. provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- F. notify the parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, the Title IX Coordinator will, at a minimum:

- A. offer supportive measures to the complainant as appropriate;
- B. if the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- C. take other prompt and effective steps, as appropriate, to ensure that sex discrimination does not continue or recur within the District's education program or activity.

**[DRAFTING NOTE: Neola encourages the Board to select the following option so the Title IX Coordinator can choose in appropriate circumstances to offer the parties the opportunity to participate in an informal resolution process, or to honor the parties' request to use an informal resolution process, to end the sex discrimination, prevent its recurrence, and remedy its effects.]**

[OPTIONAL LANGUAGE: INFORMAL RESOLUTION PROCESS]

**Informal Resolution Process:**

In lieu of resolving a complaint through the Board's Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. The District will not offer an 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.

[END OF OPTIONAL LANGUAGE: INFORMAL RESOLUTION PROCESS]

**Adding Allegations and/or Consolidating Complaints:**

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 original Notice of Allegations provided or that are included in a complaint that is consolidated, the Title IX Coordinator will notify the parties of the additional allegations.

**Investigation:**

The District will provide for an 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 Title IX Coordinator, or the designated investigator and/or decisionmaker, 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.

The Title IX Coordinator, or the designated investigator and/or decisionmaker, will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

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:

A. the District will provide the parties with an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence;

If the Title IX Coordinator, or designated investigator, provides a description of the evidence, the Title IX Coordinator, or designated investigator, will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

B. the District will provide a reasonable opportunity to the parties to respond to the evidence or the accurate description of the evidence; and

C. 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.

#### Questioning the Parties and Witnesses:

**[DRAFTING NOTE: If the investigator and decisionmaker are two (2) separate persons, the Board may select OPTION 1 or OPTION 2, or refrain from addressing this topic in the policy.]**

#### [OPTION 1]

~~As part of the Investigation, the investigator ( ) may ( ) is encouraged to [END OF OPTION] include in the investigator's notes/file the investigator's opinion about each party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one (1) or more allegations of sex discrimination.~~

[END OF OPTION 1]

#### [OPTION 2]

~~The investigator should refrain from including in the investigator's notes/file the investigator's opinion about each party's or witness's credibility since the assessment of credibility is solely the responsibility of the decisionmaker.~~

[END OF OPTION 2]

#### [END OF OPTIONS]

If the investigator and decisionmaker are two (2) separate individuals, the decisionmaker will have an opportunity to question the parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one (1) or more allegations of sex discrimination.

If the investigator and the decisionmaker are the same person, the decisionmaker will have an opportunity to question the parties and witnesses in individual meetings as part of the investigation.

**[DRAFTING NOTE: The Board may select either, both, or neither of the following options. The Board should consult with its Legal Counsel to assess whether to offer any of these options.]**

Before concluding the Investigation, the investigator ~~( ) will~~  may [END OF OPTION] allow each party to propose/submit in writing relevant questions that the party wants asked of any party or witness and

**[DRAFTING NOTE: SELECT OPTION 1, OPTION 2, OR OPTION 3. Neola does not have an opinion as to whether the Board selects OPTION 1 or OPTION 2 but has reservations about OPTION 3. The Board should consult with its Legal Counsel before selecting OPTION 3.]**

#### [OPTION 1]

the investigator will review any questions submitted by the parties and ask those questions of the specific party or witness that the investigator determines – in the investigator's sole discretion – may lead to probative evidence that will assist the decisionmaker in determining whether sex discrimination occurred. The investigator's decision to ask or not ask a specific question proposed by a party is not subject to review. Any questions asked must be relevant and not otherwise impermissible.

[END OF OPTION 1]

[OR]

#### [OPTION 2]

~~the investigator will ask the relevant and not otherwise impermissible questions of the specific party or witness during one (1) or more individual meetings, including follow up meetings, with the party or witness.~~

[END OF OPTION 2]

[OR]

#### [OPTION 3]

~~the investigator will ask the relevant questions that are not otherwise impermissible, provide each party with the answers, and allow for additional, limited follow up relevant questions from each party. ( ) The investigator will explain to the party proposing the question(s) any decision to exclude a question as not relevant.~~

[END OF OPTION 3]



**[END OF OPTIONS]**

After the parties have an opportunity to review the relevant and not otherwise impermissible evidence, or an accurate description of this evidence, the decisionmaker ~~( ) will (X )~~ may

**[DRAFTING NOTE: Select OPTION 1, OPTION 2, OPTION 3, OR OPTION 4. While Neola does not have an opinion as to whether the Board selects OPTION 1 or OPTION 2, it does not recommend the Board select OPTION 3 or OPTION 4, without consulting with its Legal Counsel.]**

**[OPTION 1]**

allow each party to propose/submit in writing relevant questions that the party wants asked of any party or witness and the decisionmaker will review any relevant and not otherwise impermissible questions submitted by the parties and ask those questions of the specific party or witness that the decisionmaker determines – in the decisionmaker’s sole discretion – may lead to probative evidence that will assist the decisionmaker in determining whether sex discrimination occurred. The decisionmaker’s decision to ask or not ask a specific question proposed by a party is not subject to review. Any questions asked must be relevant and not otherwise impermissible.

**[END OF OPTION 1]**

**[OR]**

~~( ) [OPTION 2]~~

~~allow each party to propose/submit in writing relevant questions that the party wants asked of any party or witness and the decisionmaker will ask the relevant and not otherwise impermissible questions of the specific party or witness during one (1) or more individual meetings, including follow up meetings, with the party or witness.~~

**[END OF OPTION 2]**

**[OR]**

~~( ) [OPTION 3]~~

~~allow each party to propose/submit in writing relevant questions that the party wants asked of any party or witness and the decisionmaker will ask the relevant questions that are not otherwise impermissible, provide each party with the answers, and allow for additional, limited follow up relevant questions from each party. ( ) The decisionmaker will explain to the party proposing the question(s) any decision to exclude a question as not relevant. **[END OF OPTION]**~~

**[END OF OPTION 3]**

**[OR]**

~~( ) [OPTION 4]~~

~~provide each party with an audio or audiovisual recording or transcript of the investigator’s interviews of the parties and witnesses with enough time for the parties to have a reasonable opportunity to propose/submit in writing follow up questions, and the decisionmaker~~

~~( ) will review any follow up questions submitted and ask those relevant and not otherwise impermissible follow up questions of the specific party or witness that the decisionmaker determines – in the decisionmaker’s sole discretion – may lead to probative evidence that will assist the decisionmaker in determining whether sex discrimination occurred. The decisionmaker’s decision to ask or not ask a specific follow up question proposed by a party is not subject to review. Any questions asked must be relevant and not otherwise impermissible.~~

~~( ) will ask the relevant and not otherwise impermissible follow up questions of the specific party or witness during one (1) or more individual meetings.~~

**[END OF OPTION 4]**

**[END OF OPTIONS]**

**Determination of Whether Sex Discrimination Occurred:**

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the Title IX Coordinator or designated decisionmaker will:

- A. Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. **[DRAFTING NOTE: Pursuant to the 2024 Title IX regulations, the Board may only use the "clear and convincing" evidence standard of proof if it uses that standard of proof in all other comparable proceedings (i.e., when assessing the merits of allegations presented pursuant to complaints filed under the Board’s general nondiscrimination and antiharassment policies – see Policies (Insert numbers of nondiscrimination, antiharassment, and Section 504/ADA – e.g., 2260, 2260.01, 5517, and the Employee policies that are going to be consolidated under new numbers)). Neola expects it will be a rare situation when a board chooses to use a clear and convincing standard of proof. If the Board is unsure whether it meets the criteria to be able to use the "clear and convincing standard," it should consult with its Legal Counsel.]** This standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker, applying the applicable standard, is not persuaded by the relevant and not otherwise impermissible evidence that sex discrimination occurred, regardless of the quantity of the evidence, the decisionmaker will not determine that sex discrimination occurred.
- B. 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.
- C. 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.

D. If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:

1. 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;
2. coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
3. 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.

E. Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent; and

F. 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 of whether sex discrimination occurred.

**[DRAFTING NOTE: As addressed above, the Board must offer an appeal if the Title IX Coordinator dismisses a complaint in the Evaluation stage (i.e., prior to commencing an investigation). While a board may elect not to offer an appeal from the determination of whether sex discrimination occurred, Neola recommends the Board include an appeal process. If the Board includes an appeal process, the appeal process must be, at a minimum, the same appeal process the Board offers in all other comparable proceedings, including proceedings relating to other discrimination complaints. Neola intends to update its nondiscrimination, antiharassment, and Section 504/ADA policies to provide for appeal procedures that are comparable to that which is included in the following option.]**

[OPTIONAL LANGUAGE]

#### Appeal of Determinations:

If a party disagrees with the decisionmaker's determination as to whether sex discrimination occurred, the party may file an appeal. Appeals must be submitted, in writing, within five (5) (INSERT # OF DAYS) days of the appealing party's receipt of the Determination.

A party may appeal a Determination on the following bases:

- A. procedural irregularity that would change the outcome;
- B. new evidence that would change the outcome and that was not reasonably available when the Determination was made; and
- C. 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.

**[DRAFTING NOTE: The Board may insert additional grounds on which an appeal may be filed.]**

- D. ~~( ) the recommended remedies (including disciplinary sanctions/consequences) are unreasonable in light of the findings of fact (i.e., the nature and severity of the sex discrimination).~~
- E. ~~( ) [OTHER] \_\_\_\_\_.~~

The complainant may not challenge the ultimate disciplinary sanction/consequence that is imposed. [END OF OPTION]

If a party appeals the decisionmaker's determination, the Title IX Coordinator will:

- A. notify the parties of any appeal;
- B. implement appeal procedures equally for the parties;
- C. designate an appeal decisionmaker, who will be a person who did not conduct the Investigation or render the Determination, and is appropriately trained , as set forth in AG 2264 [END OF OPTION];
  1.  the Title IX Coordinator will designate the Superintendent to be the appeal decisionmaker, provided the Superintendent has not been otherwise involved in the grievance procedures (i.e., did not serve as the investigator, decisionmaker, or informal resolution process facilitator) and is appropriately trained; [END OF OPTION]
  2. ~~( ) in designating an appeal decisionmaker, the Title IX Coordinator will work with the Board to identify and appoint an independent third party to serve as the appeal decisionmaker—this individual shall be considered to be the Board's designee and will submit the appeal decision to the Board who will promptly adopt it as written and forward it to the Title IX Coordinator who will send it simultaneously to the parties; [END OF OPTION]~~

**[DRAFTING NOTE: The preceding options are offered for those districts where the Superintendent or Board typically serves as the appeal decisionmaker; with respect to Title IX, it is Neola's opinion that it is not feasible for the Board to serve as the decisionmaker for a number of reasons, not the least of which is the mandatory training requirements.]**

3. provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the decisionmaker's determination;
4. provide the appeal decisionmaker with the relevant and not otherwise impermissible evidence along with the accurate description of the relevant evidence (if one was prepared and shared with the parties), any responses the parties submitted to the investigator related to the evidence and/or the description of the evidence (if one was prepared), and the decisionmaker's determination; and
5. notify the parties, in writing, of the result of the appeal and the appeal decisionmaker's rationale for the outcome.

[END OF OPTIONAL LANGUAGE]

**Parties Provided a Reasonable and Equal Opportunity to Make a Statement in Support of, or Challenging, the Determination**

**[DRAFTING NOTE: The Board must select OPTION 1, OPTION 2, or OPTION 3]**

[OPTION 1]

When a party files an appeal, the party must set forth the reason for the appeal, and the other party will have five (5) [INSERT # OF DAYS] days to provide the appeal decisionmaker with a statement in support of their position. Once the decisionmaker receives the statement (or the deadline for filing such a statement expires), the appeal decisionmaker will have ten (10) [INSERT # OF DAYS] days to issue a decision on the appeal.

**[END OF OPTION 1]**

[OR]

[OPTION 2]

~~After a party files an appeal, both parties will have \_\_\_\_\_ [INSERT # OF DAYS] days to submit to the appeal decisionmaker a statement in support of their position that they want the appeal decisionmaker to consider in rendering a decision. Once the decisionmaker receives each parties' statement, or the timeline for submitting such statements expires, the appeal decisionmaker will have \_\_\_\_\_ [INSERT # OF DAYS] days to issue a decision on the appeal.~~

**[END OF OPTION 2]**

[OR]

[OPTION 3]

~~When a party files an appeal, the appeal decisionmaker shall establish a timeline for each party to submit a statement in support of their position that they want the appeal decisionmaker to consider in rendering a decision. Once the decisionmaker receives the parties' statements, or the timeline established by the appeal decisionmaker for submitting such statements expires, the appeal decisionmaker will have \_\_\_\_\_ [INSERT # OF DAYS] days to issue a decision on the appeal.~~

**[END OF OPTION 3]**

**[END OF OPTIONS]**

**[DRAFTING NOTE: With respect to the timelines listed in the preceding options, Neola suggests any appeals should be filed within five (5) days of the parties receiving written notice of the Dismissal or Determination. Neola further suggests that the timeline for submitting a statement in OPTION 1 be equivalent to the timeframe in which an appeal has to be filed, and the timeline for submitting a statement in OPTION 2 be five (5) days. Finally, Neola suggests the appeal decisionmaker have ten (10) days from receipt of the statements to issue a decision.]**

No new or additional evidence may be submitted during the appeal process.

The appeal decisionmaker shall determine the outcome of the appeal based on the appeal decisionmaker's independent review of the record (i.e., the relevant and not otherwise impermissible evidence, the feedback the parties provided to the investigator and/or decisionmaker based on their review of the relevant evidence and any description of the relevant evidence that was prepared and shared with the parties, and the decisionmaker's written determination) and the appeal decisionmaker's application of the law and Board policy to the facts in the record. The appeal decisionmaker must give due deference and due weight to the decisionmaker's factual findings and credibility determinations and should not overturn them unless non-testimonial extrinsic evidence in the record justifies a contrary conclusion or unless the record read in its entirety compels a contrary conclusion. Generally, the appeal decisionmaker is expected to uphold the decisionmaker's determination unless the appeal decisionmaker determines the decisionmaker's determination is unlawful, unreasonable, or against the manifest weight of the evidence. Every reasonable presumption must be made in favor of the decisionmaker's determination.

The appeal decisionmaker shall

**[DRAFTING NOTE: The Board must select either OPTION 1 or OPTION 2 unless the Board appointed an independent third party to serve as the Board's appeal decisionmaker, in which case the Board should select OPTION 3.]**

[OPTION 1]

simultaneously notify the parties, in writing, of the result of the appeal and the rationale for the outcome.

**[END OF OPTION 1]**

[OR]

[OPTION 2]

~~notify the Title IX Coordinator, in writing, of the result of the appeal and the rationale for the outcome. The Title IX Coordinator will then simultaneously notify the parties, in writing, of the result of the appeal and the appeal decisionmaker's rationale for the outcome.~~

**[END OF OPTION 2]**

[OR]

[OPTION 3]

~~submit the appeal decision to the Board who will promptly adopt it as written and forward it to the Title IX Coordinator who will send it simultaneously to the parties. The appeal decision shall set forth the result of the appeal and the appeal decisionmaker's rationale for the outcome.~~

**[END OF OPTION 3]**

**[END OF OPTIONS]**

**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 Board's grievance procedures or during the informal resolution process. For allegations of sex discrimination other than sex-based harassment or retaliation, the District's provision of support measures does not require the District, Board employees, or any other person authorized to provide aid, benefit, or service on the District's behalf to alter the alleged discriminatory conduct for the purpose of providing a supportive measure.

The Title IX Coordinator shall determine appropriate supportive measures on a case-by-case basis. Supportive measures may vary depending on what the Title IX Coordinator deems to be reasonably available. Supportive measures may include, but are not limited to: counseling; extensions of deadlines or other course-related adjustments; school/campus escort services; increased security and monitoring of certain areas of the campus (including school buildings and facilities); restrictions on contact between the parties; leaves of absence; changes in class, work, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; training and education programs related to sex-based harassment; **(X)** referral to Employee Assistance Program **[END OF OPTION]**; and other similar measures.

Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties and/or the District's educational environment, or to provide support during the Board's grievance procedures or the informal resolution process.

The District will not impose such measures for punitive or disciplinary reasons.

The Title IX Coordinator may, as appropriate, modify or terminate supportive measures at the conclusion of the grievance procedures, or at the conclusion of the informal resolution process, or the District may continue them beyond that point.

The District will provide a complainant or respondent with a timely opportunity to seek, from an appropriate and impartial employee, modification or reversal of the Title IX Coordinator's decision to provide, deny, modify, or terminate supportive measures applicable to them. The impartial employee must be someone other than the employee who made the challenged decision and must have authority to modify or reverse the decision if the impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the definition of supportive measures as set forth in the Key Definitions section of this policy.

A party may seek additional modification or termination of a supportive measure applicable to them if circumstances change materially.

The District will not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the District's education program or activity, or as otherwise permitted pursuant to the 2024 Title IX regulations.

If the complainant or respondent is an elementary or secondary student with a disability, the Title IX Coordinator shall consult with one (1) or more members, as appropriate, of the student's Individualized Education Program (IEP) team, if any, or one (1) or more members, as appropriate, of the student's Section 504 team, if any, to determine how to comply with the requirements of the IDEA and/or Section 504, in the implementation of supportive measures.

The Superintendent may place an employee respondent on administrative leave from employment responsibilities during the pendency of the Board's grievance procedures.

**Disciplinary Sanctions and Remedies:**

Following a determination that sex-based harassment occurred, the District may impose disciplinary sanctions, which may include:

**For Students**

A. Informal Discipline

1. **(X)** writing assignments;
2. **(X)** changing of seating or location;
3. ~~( ) pre-school~~, **(X)** lunchtime, **(X)** after-school **[END OF OPTIONS]** detention;
4. **(X)** in-school discipline;
5. **(X)** Saturday school.

B. Formal Discipline

1. suspension of bus riding/transportation privileges;
2. removal from co-curricular and/or extracurricular activity(ies), including athletics;
3. emergency removal;
4. suspension for up to ten (10) school days;
5. expulsion for up to eighty (80) school days or the number of school days remaining in a semester, whichever is greater;
6. expulsion for up to one (1) year;
7. permanent exclusion; and
8. any other sanction authorized by the Student Code of Conduct.

## For Employees

- A.  oral or written warning;
- B.  written reprimands;
- C.  required counseling;
- D.  required training or education;
- E.  demotion;
- F.  suspension with pay;
- G. suspension without pay;
- H. termination and any other sanction authorized by any applicable Board Policy, Employee/Administrator Handbook, and/or collective bargaining agreement.

The District may also provide remedies which may include disciplinary sanctions/consequences. The Title IX Coordinator will notify the Superintendent of the recommended remedies, so an authorized administrator can consider the recommendation and implement appropriate remedies in compliance with applicable due process procedures, whether statutory or contractual.

With respect to student respondents, the Title IX Coordinator will notify the Superintendent of the recommended remedies (including disciplinary sanctions/consequences), so an authorized administrator can consider the recommendation(s) and implement an appropriate remedy(ies) in compliance with Policy 5600 – Student Discipline, Policy 5605 – Suspension/Expulsion of Students with Disabilities, Policy 5610 – Emergency Removal, Suspension, Expulsion, and Permanent Exclusion of Students, Policy 5610.02 – In-School Discipline, and Policy 5611 – Due Process Rights. Discipline of a student respondent must comply with the applicable provisions of the Individuals with Disabilities Education Improvement Act (IDEA) and/or Section 504 of the Rehabilitation Act of 1972 ("Section 504"), and their respective implementing regulations.

**[DRAFTING NOTE: The Board should review applicable policy(ies)/administrative guidelines/employee handbooks to determine whether changes are needed to establish timelines associated with imposition of discipline as result of possible delays caused by the Board's obligation to follow the grievance procedures; likewise, the Board may need to discuss with union representatives how implementation of the grievance procedures may impact any disciplinary provisions contained in applicable collective bargaining (e.g., timelines, permitted attendees at investigative interviews, etc.).]**

Discipline of an employee will be implemented in accordance with Federal and State law, Board policy, and applicable provisions of any relevant collective bargaining agreement.

## Retaliation

Neither the Board nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. Intimidation, threats, coercion, or discrimination, including initiating a disciplinary process against a person for a code of conduct violation that does not involve sex discrimination but arises out of the same facts and circumstances as a complaint or information reported about possible sex discrimination, for the purpose of interfering with the exercise of any right or privilege secured by Title IX constitutes retaliation. Peer retaliation is also prohibited. Retaliation against a person for making a complaint or participating in an investigation is a serious violation of this policy that can result in the imposition of disciplinary sanctions/consequences and/or other appropriate remedies.

Complaints alleging retaliation may be filed according to the grievance procedures set forth above. The District shall initiate its grievance procedures upon receiving any complaint alleging retaliation.

The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited under this policy.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy shall not constitute retaliation, provided, however, that a determination that sex discrimination occurred, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

## Confidentiality

The District will keep confidential the identity of any individual who has made a complaint of sex discrimination, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, or FERPA regulations, 34 C.F.R. part 99, or as required by law, or to carry out the purposes of 34 C.F.R. part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder (i.e., the District's obligation to maintain confidentiality shall not impair or otherwise affect the complainant's and respondent's receipt of the information to which they are entitled related to the investigation and determination of whether sex discrimination occurred).

## Application of the First Amendment

The Board will construe and apply this policy consistent with the First Amendment to the U.S. Constitution ~~( ) and the principles of academic freedom as set forth in the applicable collective bargaining agreement~~ **[END OF OPTION]**. In no case will a respondent be found to have committed sex discrimination based on expressive conduct that is protected by the First Amendment ~~( ) and/or the principles of academic freedom specified in the Board's collective bargaining agreement with its teachers~~ **[END OF OPTION]**.

## Training

All employees, investigators, decisionmakers, facilitators of informal resolution process, the Title IX Coordinator(s) and designees, and other persons who are responsible for implementing the Board's grievance procedures or have the authority to modify or terminate supportive measures shall receive training related to their duties under Title IX and this Policy. The training shall be provided promptly upon hiring or change of position that alters their duties under Title IX or this policy, and annually thereafter. The training shall not rely on sex stereotypes.

Training materials must be made available for inspection upon request by members of the public.

### **Recordkeeping**

The District shall maintain for a period of seven (7) calendar years the following records:

- A. for each complaint of sex discrimination, records documenting the informal resolution process and/or the grievance procedures followed and the resulting outcome;
- B. for each notification that the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX, including notifications under 34 C.F.R. § 106.44(c)(1) or (2), records documenting the actions the District took to meet its obligations under 34 C.F.R. §106.44; and
- C. all materials used to provide the required training.

### **Outside Appointments, Dual Appointments, and Delegations**

The Board retains discretion to appoint suitably qualified persons who are not Board employees to fulfill any function of the Board under this policy including, but not limited to, Title IX Coordinator, investigator, decisionmaker, appeal decisionmaker, or facilitator of the informal resolution process.

The Board also retains discretion to appoint two (2) or more persons to jointly fulfill the role of Title IX Coordinator, investigator, decisionmaker, appeal decisionmaker, and facilitator of the informal resolution process.

The Superintendent may delegate functions assigned to a specific Board employee under this policy including, but not limited to, the functions assigned to the Title IX Coordinator, investigator, decisionmaker, appeal decisionmaker, and facilitator of the informal resolution process to any suitably qualified individual and such delegation may be rescinded by the Superintendent at any time.

**[DRAFTING NOTE: The following option expressly sets forth authority that the Board has regardless of whether it is included in this policy, but is offered for those boards of education that may want to affirmatively communicate to/address these issues for readers of this policy.]**

### **Discretion in Application**

The Board retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the Board's interpretation or application differs from the interpretation of any specific complainant and/or respondent.

Despite the Board's reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the Board retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this policy are not contractual in nature, whether in their own right or as part of any other express or implied contract. Accordingly, the Board retains discretion to revise this policy at any time, and for any reason. The Board may apply policy revisions to an active case provided that doing so is not clearly unreasonable.

### **[END OF OPTION]**

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Legal

- 20 U.S.C. 1092(F)(6)(A)(v)
- 20 U.S.C. 1232g
- 20 U.S.C. 1400 et seq., The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)
- 20 U.S.C. 1681 et seq., Title IX of the Education Amendments of 1972 (Title IX)
- 29 C.F.R. Part 1636
- 34 C.F.R. Part 99
- 34 C.F.R. Part 106
- 34 U.S.C. 12291(a)(8)
- 34 U.S.C. 12291(a)(10)
- 34 U.S.C. 12291(a)(30)
- 42 U.S.C. 1983
- 42 U.S.C. 2000c et seq., Title IV of the Civil Rights Act of 1964
- 42 U.S.C. 2000d et seq.
- 42 U.S.C. 2000e et seq.
- 42 U.S.C. 2000gg
- OCR's Revised Sexual Harassment Guidance (2001)

Book	Policy Manual
Section	Pending Policy Committee Review
Title	NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES
Code	po2266
Status	
Adopted	September 23, 2020
Last Revised	December 5, 2023

## 2266 - NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES

### **(The Board's Policy and Grievance Procedures for Responding to Sexual Harassment Alleged to Have Occurred Prior to 8/1/2024)**

Effective August 1, 2024, this policy shall only pertain to Reports or Formal Complaints of Sexual Harassment that are based on conduct alleged to have occurred on or before July 31, 2024.

#### **Introduction**

The Board of Education of Lake Orion Community Schools (hereinafter referred to as "the Board" or "the District") does not discriminate on the basis of sex (including sexual orientation or gender identity), in its education programs or activities, and is required by Title IX of the Education Amendments Act of 1972, and its implementing regulations, not to discriminate in such a manner. The requirement not to discriminate in its education program or activity extends to admission and employment. The Board is committed to maintaining an education and work environment that is free from discrimination based on sex, including sexual harassment.

The Board prohibits Sexual Harassment that occurs within its education programs and activities. When the District has actual knowledge of Sexual Harassment in its education program or activity against a person in the United States, it shall promptly respond in a manner that is not deliberately indifferent.

Pursuant to its Title IX obligations, the Board is committed to eliminating Sexual Harassment and will take appropriate action when an individual is determined responsible for violating this policy. Board employees, students, third-party vendors and contractors, guests, and other members of the School District community who commit Sexual Harassment are subject to the full range of disciplinary sanctions set forth in this policy. The Board will provide persons who have experienced Sexual Harassment ongoing remedies as reasonably necessary to restore or preserve access to the District's education programs and activities.

#### **Coverage**

This policy applies to Sexual Harassment that occurs within the District's education programs and activities and that is committed by a member of the School District community or a Third Party.

This policy does not apply to Sexual Harassment that occurs off school grounds, in a private setting, and outside the scope of the District's education programs and activities; such Sexual Misconduct/Sexual Activity may be prohibited by the Student Code of Conduct if committed by a student, or by Board policies and administrative guidelines, applicable State and/or Federal laws and/or Employee/Administrator Handbook(s) if committed by a Board employee.

Consistent with the U.S. Department of Education's implementing regulations for Title IX, this policy does not apply to Sexual Harassment that occurs outside the geographic boundaries of the United States, even if the Sexual Harassment occurs in the District's education programs or activities. Sexual Harassment that occurs outside the geographic boundaries

of the United States is governed by the Student Code of Conduct if committed by a student, or by Board policies and administrative guidelines, applicable State and/or Federal laws and/or Employee/Administrator Handbook(s) if committed by a Board employee.

## Definitions

Words used in this policy shall have those meanings defined herein; words not defined herein shall be construed according to their plain and ordinary meanings.

**Sexual Harassment:** "Sexual Harassment" means conduct on the basis of sex that satisfies one or more of the following:

- A. A Board employee conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct (often called "*quid pro quo*" harassment);
- B. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the District's education program or activity; or
- C. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)A(v), or "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

"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, and the "nonforcible" sex offenses of Incest and Statutory Rape. Sexual assault includes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape.

1. *Rape* is the carnal knowledge of a person (i.e., penetration, no matter how slight, of the genital or anal opening of a person), without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  2. *Sodomy* is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  3. *Sexual Assault with an Object* is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything used by the offender other than the offender's genitalia.
  4. *Fondling* is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  5. *Incest* is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by State law.
  6. *Statutory Rape* is sexual intercourse with a person who is under the statutory age of consent as defined by State law.
  7. *Consent* refers to words or actions that a reasonable person would understand as agreement to engage in the sexual conduct at issue. A person may be incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. A person who is incapacitated is not capable of giving consent.
  8. *Incapacitated* refers to the state where a person does not understand and/or appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition, disability, or due to a state of unconsciousness or sleep.
- D. "Domestic violence" includes felony or misdemeanor crimes of violence committed by:
1. a current or former spouse or intimate partner of the victim;
  2. a person with whom the victim shares a child in common;



3. a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
4. a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime occurred; or
5. 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 in which the crime occurred.

E. "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. The existence of such a relationship shall be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

F. "Stalking" means 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.

**Complainant:** "Complainant" means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

**Respondent:** "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

**Formal Complaint:** "Formal Complaint" means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the District investigate the allegation(s) of Sexual Harassment. At the time of filing a Formal Complaint with the District, a Complainant must be participating in or attempting to participate in the District's education program or activity. A "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal that the Board provides for this purpose) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or a party to the Formal Complaint and must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

**Actual Knowledge:** "Actual knowledge" means notice of Sexual Harassment or allegations of Sexual Harassment to the District's Title IX Coordinator, or any District official who has authority to institute corrective measures on behalf of the Board, or any Board employee. The mere ability or obligation to report Sexual Harassment or to inform a student about how to report Sexual Harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the District. "Notice" includes, but is not limited to, a report of Sexual Harassment to the Title IX Coordinator. This standard is not met when the only District official with actual knowledge is the Respondent.

**Supportive Measures:** "Supportive measures" means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter Sexual Harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, school/campus escort services, mutual restrictions of contact between the parties, changes in work locations), leaves of absence, increased security and monitoring of certain areas of the campus (including school buildings and facilities), referral to Employee Assistance Program, and other similar measures.

**Education Program or Activity:** "Education program or activity" refers to all operations of the District, including but not limited to in-person and online educational instruction, employment, extracurricular activities, athletics, performances, and community engagement and outreach programs. The term applies to all activity that occurs on school grounds or on other property owned or occupied by the Board. It also includes locations, events and circumstances that take place off-school property/grounds over which the Board exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs.

**School District community:** "School District community" refers to students and Board employees (i.e., administrators, and professional and classified staff), as well as Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.

**Third Parties:** "Third Parties" include, but are not limited to, guests and/or visitors on School District property (e.g., visiting speakers, participants on opposing athletic teams, parents), vendors doing business with, or seeking to do business with the Board, and other individuals who come in contact with members of the School District community at school-related

events/activities (whether on or off District property).

**Inculpatory Evidence:** "Inculpatory evidence" is evidence that tends to establish a Respondent's responsibility for alleged Sexual Harassment.

**Exculpatory Evidence:** "Exculpatory evidence" is evidence that tends to clear or excuse a Respondent from allegations of Sexual Harassment.

**Day(s):** Unless expressly stated otherwise, the term "day" or "days" as used in this policy means business day(s) (i.e., a day(s) that the Board office is open for normal operating hours, Monday – Friday, excluding State-recognized holidays).

**Eligible Student:** "Eligible Student" means a student who has reached eighteen (18) years of age or is attending an institution of postsecondary education.

### **Title IX Coordinator(s)**

The Board of Education designates and authorizes the following individual(s) to oversee and coordinate its efforts to comply with Title IX and its implementing regulations:

Adam Weldon  
Assistant Superintendent of Human Resources  
248-693-5400  
315 N. Lapeer Street  
Lake Orion, MI 48362  
adam.weldon@lok12.org

Heidi Mercer  
Assistant Superintendent of Teaching and Learning  
248-693-5400  
315 N. Lapeer Street  
Lake Orion, MI 48362  
heidi.mercer@lok12.org

The Title IX Coordinator shall report directly to the Superintendent. Questions about this policy should be directed to the Title IX Coordinator.

The Superintendent shall notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, Board employees, and all unions or professional organizations holding collective bargaining or professional agreements with the Board of the following information:

The Board of Education of Lake Orion Community Schools does not discriminate on the basis of sex in its education program or activity, and is required by Title IX and its implementing regulations not to discriminate in such a manner. The requirement not to discriminate in its education program or activity extends to admission and employment. The District's Title IX Coordinator(s) is/are:

Adam Weldon  
Assistant Superintendent of Human Resources  
248-693-5400  
315 N. Lapeer Street  
Lake Orion, MI 48362  
adam.weldon@lok12.org

Heidi Mercer  
Assistant Superintendent of Teaching and Learning  
248-693-5400  
315 N. Lapeer Street  
Lake Orion, MI 48362  
heidi.mercer@lok12.org

Any inquiries about the application of Title IX and its implementing regulations to the District may be referred to the Title IX Coordinator(s), the Assistant Secretary for the U.S. Department of Education's Office for Civil Rights, or both.

The Board has adopted a grievance process that provide for the prompt and equitable resolution of student and employee complaints alleging any action that is prohibited by Title IX and/or its implementing regulations. The grievance process is included in Policy 2266 – Nondiscrimination on the Basis of Sex in Education Programs or Activities. The grievance process specifically addresses how to report or file a complaint of sex discrimination, how to report or file a formal complaint of Sexual Harassment, and how the District will respond.

The Superintendent shall also prominently display the Title IX Coordinator's(s') contact information – including name(s) and/or title(s), phone number(s), office address(es), and e-mail address(es) – and this policy on the District's website and in each handbook or catalog that the Board makes available to applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, Board employees, and all unions or professional organizations holding collective bargaining or professional agreements.

### **Grievance Process**

The Board is committed to promptly and equitably resolving student and employee complaints alleging Sexual Harassment. The District's response to allegations of Sexual Harassment will treat Complainants and Respondents equitably, including providing supportive measures to the Complainant and Respondent, as appropriate, and following this Grievance Process before imposition of any disciplinary sanctions or other actions, other than supportive measures, against the Respondent.

The Title IX Coordinator(s), along with any investigator(s), decision-maker(s), or any person(s) designated to facilitate an informal resolution process, shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

If a determination of responsibility for Sexual Harassment is made against the Respondent, the Board will provide remedies to the Complainant. The remedies will be designed to restore or preserve equal access to the District's education program or activity. Potential remedies include, but are not limited to, individualized services that constitute supportive measures. Remedies may also be disciplinary or punitive in nature and may burden the Respondent.

### **Report of Sexual Discrimination/Harassment**

Any person may report sex discrimination, including Sexual Harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or Sexual Harassment), in person, by mail, by telephone, or by electronic mail, using the Title IX Coordinator's(s') contact information listed above, or by any other means that results in the Title IX Coordinator receiving the person's oral or written report. Reports may be made at any time (including during non-business hours), by using the telephone number(s) or electronic mail address(es), or by mail to the office address(es), listed for the Title IX Coordinator(s). Anonymous reports may be submitted.

Board employees are required, and students, Board members, other members of the School District community, and Third Parties) are encouraged, to report allegations of sex discrimination or Sexual Harassment promptly to the/a Title IX Coordinator or to any Board employee, who will, in turn, notify the/a Title IX Coordinator. Reports can be made orally or in writing and should be as specific as possible. The person making the report should, to the extent known, identify the alleged victim(s), perpetrator(s), and witness(es), and describe in detail what occurred, including date(s), time(s), and location(s).

If a report involves allegations of Sexual Harassment by or involving the Title IX Coordinator, the person making the report should submit it to the Superintendent, or another Board employee who, in turn, will notify the Superintendent of the report. The Superintendent will then serve in place of the Title IX Coordinator for purposes of addressing that report of Sexual Harassment.

The Board does business with various vendors, contractors, and other third-parties who are not students or employees of the Board. Notwithstanding any rights that a given vendor, contractor, or third-party Respondent may have under this policy, the Board retains the right to limit any vendor's, contractor's, or third-party's access to school grounds for any reason. The Board further retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third-party irrespective of any process or outcome under this policy.

A person may file criminal charges simultaneously with filing a Formal Complaint. A person does not need to wait until the Title IX investigation is completed before filing a criminal complaint. Likewise, questions or complaints relating to Title IX may be filed with the U.S. Department of Education's Office for Civil Rights at any time.

Any allegations of Sexual Misconduct/Sexual Activity not involving Sexual Harassment will be addressed through the procedures outlined in Board policies and/or administrative guidelines, the applicable Student Code of Conduct, applicable collective bargaining agreement, and/or Employee/Administrator Handbook.

Because the Board is considered to have actual knowledge of Sexual Harassment or allegations of Sexual Harassment if any Board employee has such knowledge, and because the Board must take specific actions when it has notice of Sexual Harassment or allegations of Sexual Harassment, a Board employee who has independent knowledge of or receives a report involving allegations of sex discrimination and/or Sexual Harassment must notify the/a Title IX Coordinator within two (2) days of learning the information or receiving the report. The Board employee must also comply with mandatory reporting responsibilities pursuant to M.C.L. 722.623 and Policy 8462 – Student Abuse and Neglect, if applicable. If the Board employee’s knowledge is based on another individual bringing the information to the Board employee’s attention and the reporting individual submitted a written complaint to the Board employee, the Board employee must provide the written complaint to the Title IX Coordinator.

If a Board employee fails to report an incident of Sexual Harassment of which the Board employee is aware, the Board employee may be subject to disciplinary action, up to and including termination.

When a report of Sexual Harassment is made, the Title IX Coordinator shall promptly (i.e., within two (2) days of the Title IX Coordinator’s receipt of the report of Sexual Harassment) contact the Complainant (including the parent/guardian if the Complainant is under 18 years of age or under guardianship) to discuss the availability of supportive measures, consider the Complainant’s wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Any supportive measures provided to the Complainant or Respondent shall be maintained as confidential, to the extent that maintaining such confidentiality will not impair the ability of the District to provide the supportive measures.

**Emergency Removal:** Subject to limitations and/or procedures imposed by State and/or Federal law, the Title IX Coordinator may remove a student Respondent from its education program or activity on an emergency basis after conducting an individualized safety and risk analysis. The purposes of the individualized safety and risk analysis are to determine whether the student Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment that justifies removal. If the District determines the student Respondent poses such a threat, it will so notify the student Respondent and the student Respondent will have an opportunity to challenge the decision immediately following the removal. See Policy 5610 – Emergency Removal, Suspension, and Expulsion of Students and Policy 5611 – Due Process Rights.

If the Respondent is a non-student employee, the District may place the Respondent on administrative leave during the pendency of the grievance process.

For all other Respondents, including other members of the School District community and Third Parties, the Board retains broad discretion to prohibit such persons from entering onto its school grounds and other properties at any time and for any reason, whether after receiving a report of Sexual Harassment or otherwise.

### **Formal Complaint of Sexual Harassment**

A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information set forth above.

When the Title IX Coordinator receives a Formal Complaint or signs a Formal Complaint, the District will follow its Grievance Process, as set forth herein. Specifically, the District will undertake an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations will not be based on a person’s status as a Complainant, Respondent, or witness.

It is a violation of this policy for a Complainant(s), Respondent(s), and/or witness(es) to knowingly making false statements or knowingly submitting false information during the grievance process, including intentionally making a false report of Sexual Harassment or submitting a false Formal Complaint. The Board will not tolerate such conduct, which is a violation of the Student Code of Conduct and the Employee/Administrator Handbook.

The Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

### **Timeline**

The District will seek to conclude the grievance process within sixty (60) days of receipt of the Formal Complaint.

If the Title IX Coordinator offers informal resolution processes, the informal resolution processes may not be used by the Complainant or Respondent to unduly delay the investigation and determination of responsibility. The timeline, however, may be subject to a temporary delay of the grievance process or a limited extension for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action. Good cause may include

considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; and the need for language assistance or accommodation of disabilities. The Title IX Coordinator will provide the parties with reasonable updates on the status of the grievance process.

Upon receipt of a Formal Complaint, the Title IX Coordinator will provide written notice of the following to the parties who are known:

- A. Notice of the Board's grievance process, including any informal resolution processes;
- B. Notice of the allegations of misconduct that potentially constitutes Sexual Harassment as defined in this policy, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident, if known. The written notice must:
  - 1. include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process;
  - 2. inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.
  - 3. inform the parties of any provision in the Student Code of Conduct, this policy, and/or Employee/Administrator Handbook that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, during the course of the investigation, the investigator becomes aware of allegations about the Complainant or Respondent that are not included in the original notice provided to the parties, the investigator will notify the Title IX Coordinator and the Title IX Coordinator will decide whether the investigator should investigate the additional allegations; if the Title IX Coordinator decides to include the new allegations as part of the investigation, the Title IX Coordinator will provide notice of the additional allegations to the parties whose identities are known.

### **Dismissal of a Formal Complaint**

The District shall investigate the allegations in a Formal Complaint, *unless* the conduct alleged in the Formal Complaint:

- A. would not constitute Sexual Harassment (as defined in this policy) even if proved;
- B. did not occur in the District's education program or activity; or
- C. did not occur against a person in the United States.

If one of the preceding circumstances exist, the Title IX Coordinator *shall* dismiss the Formal Complaint. If the Title IX Coordinator dismisses the Formal Complaint due to one of the preceding reasons, the District may still investigate and take action with respect to such alleged misconduct pursuant to another provision of an applicable code of conduct, Board policy, and/or Employee/Administrator Handbook.

The Title IX Coordinator *may* dismiss a Formal Complaint, or any allegations therein, if at any time during the investigation:

- A. a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- B. the Respondent is no longer enrolled in the District or employed by the Board; or
- C. specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

If the Title IX Coordinator dismisses a Formal Complaint or allegations therein, the Title IX Coordinator must promptly send written notice of the dismissal and the reason(s) therefore simultaneously to the parties.

### **Consolidation of Formal Complaints**

The Title IX Coordinator may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Sexual Harassment arise out of the same facts or circumstances.

Where a grievance process involves more than one Complainant or more than one Respondent, references in this policy to the singular "party," "Complainant," or "Respondent" include the plural, as applicable.

### **Informal Resolution Process**

Under no circumstances shall a Complainant be required as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, to waive any right to an investigation and adjudication of a Formal Complaint of Sexual Harassment. Similarly, no party shall be required to participate in an informal resolution process.

If a Formal Complaint is filed, the Title IX Coordinator may offer to the parties an informal resolution process. If the parties mutually agree to participate in the informal resolution process, the Title IX Coordinator shall designate a trained individual to facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. The informal resolution process may be used at any time prior to the decision-maker(s) reaching a determination regarding responsibility.

If the Title IX Coordinator is going to propose an informal resolution process, the Title IX Coordinator shall provide to the parties a written notice disclosing:

- A. the allegations;
- B. the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations; and
- C. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

Any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint.

Before commencing the informal resolution process, the Title IX Coordinator shall obtain from the parties their voluntary, written consent to the informal resolution process.

During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur have stayed and all related deadlines are suspended.

The informal resolution process is not available to resolve allegations that a Board employee or another adult member of the School District community or Third Party sexually harassed a student.

The informal resolution process is not available to resolve allegations involving a sexual assault involving a student Complainant and a student Respondent.

### **Investigation of a Formal Complaint of Sexual Harassment**

In conducting the investigation of a Formal Complaint and throughout the grievance process, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility is on the District, not the parties.

In making the determination of responsibility, the decision-maker(s) is(are) directed to use the preponderance of the evidence standard. The decision-maker(s) is charged with considering the totality of all available evidence, from all relevant sources.

The District is not permitted to access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the party provides the District with voluntary, written consent to do so; if a student party is not an Eligible Student, the District must obtain the voluntary, written consent of a parent.

Similarly, the investigator(s) and decision-maker(s) may not require, allow, rely upon or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege in writing.

As part of the investigation, the parties have the right to:

- A. present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence; and
- B. have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. The District may not limit the choice or presence of an advisor for either the Complainant or Respondent in any meeting or grievance proceeding.

Neither party shall be restricted in their ability to discuss the allegations under investigation or to gather and present relevant evidence.

The District will provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient time for the party to prepare to participate. The investigator(s) and decision-maker(s) must provide a minimum of one (1) day notice with respect to investigative interviews and other meetings and three (3) days' notice with respect to hearings.

Both parties shall have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.

Prior to completion of the investigative report, the investigator will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have at least ten (10) calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report.

At the conclusion of the investigation, the investigator shall create an investigative report that fairly summarizes relevant evidence and send the report to each party and the party's advisor, if any, for their review and written response. The investigator will send the investigative report in an electronic format or a hard copy, at least ten (10) calendar days prior to the decision-maker(s) issuing a determination regarding responsibility.

### **Determination of Responsibility**

The Title IX Coordinator shall appoint a decision-maker(s) to issue a determination of responsibility. The decision-maker(s) cannot be the same person(s) as the Title IX Coordinator(s) or the investigator(s).

After the investigator sends the investigative report to the parties and the decision-maker(s), and before the decision-maker(s) reaches a determination regarding responsibility, the decision-maker(s) will afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

**Determination regarding responsibility:** The decision-maker(s) will issue a written determination regarding responsibility. To reach this determination, the decision-maker(s) must apply the preponderance of the evidence standard.

The written determination will include the following content:

- A. identification of the allegations potentially constituting Sexual Harassment pursuant to this policy;
- B. a description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, [and] methods used to gather other evidence;
- C. findings of fact supporting the determination;
- D. Conclusions regarding the application of the applicable code of conduct to the facts;

E. a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the decision-maker(s) is recommending that the District impose on the Respondent(s), and whether remedies designed to restore or preserve equal access to the District's education program or activity should be provided by the District to the Complainant(s); and

F. the procedures and permissible bases for the Complainant(s) and Respondent(s) to appeal.

The following disciplinary sanctions/consequences may be imposed on a student Respondent who is determined responsible for violating this policy (i.e., engaging in Sexual Harassment):

A. Informal Discipline

1. writing assignments;
2. changing of seating or location;
3. lunchtime, after-school detention;
4. in-school discipline;
5. Saturday school;

B. Formal Discipline

1. suspension of bus riding/transportation privileges;
2. removal from co-curricular and/or extra-curricular activity(ies), including athletics;
3. emergency removal;
4. suspension for up to ten (10) school days;
5. long-term suspension or expulsion;
6. any other sanction authorized by the Student Code of Conduct.

If the decision-maker(s) determines the student Respondent is responsible for violating this policy (i.e., engaging in Sexual Harassment), the decision-maker(s) will recommend appropriate remedies, including disciplinary sanctions/consequences. The Title IX Coordinator will notify the Superintendent of the recommended remedies, so an authorized administrator can consider the recommendation(s) and implement an appropriate remedy(ies) in compliance with Policy 5600 – Student Discipline, Policy 5605 – Suspension/Expulsion of Students with Disabilities, Policy 5610 – Emergency Removal, Suspension, and Expulsion of Students, Policy 5610.02 - In-School Discipline, and Policy 5611 – Due Process Rights. Discipline of a student Respondent must comply with the applicable provisions of the Individuals with Disabilities Education Improvement Act (IDEA) and/or Section 504 of the Rehabilitation Act of 1972, and their respective implementing regulations.

The following disciplinary sanctions/consequences may be imposed on an employee Respondent who is determined responsible for violating this policy (i.e., engaging in Sexual Harassment):

- A. oral or written warning;
- B. written reprimands;
- C. performance improvement plan;
- D. required counseling;
- E. required training or education;
- F. demotion;
- G. suspension with pay;
- H. suspension without pay;



- I. termination, and any other sanction authorized by any applicable Employee/Administrator Handbook and/or collective bargaining agreement.

If the decision-maker(s) determines the employee Respondent is responsible for violating this policy (i.e., engaging in Sexual Harassment), the decision-maker(s) will recommend appropriate remedies, including disciplinary sanctions/consequences. The Title IX Coordinator will notify the Superintendent of the recommended remedies, so an authorized administrator can consider the recommendation(s) and implement an appropriate remedy(ies) in compliance with applicable due process procedures, whether statutory or contractual.

Discipline of an employee will be implemented in accordance with Federal and State law, Board policy, and applicable provisions of any relevant collective bargaining agreement.

The following disciplinary sanctions/consequences may be imposed on a non-student/non-employee member of the School District community or Third Party who is determined responsible for violating this policy (i.e., engaging in Sexual Harassment):

- A. oral or written warning;
- B. suspension or termination/cancellation of the Board's contract with the third-party vendor or contractor;
- C. mandatory monitoring of the third-party while on school property and/or while working/interacting with students;
- D. restriction/prohibition on the third-party's ability to be on school property; and
- E. any combination of the same.

If the decision-maker(s) determines the third-party Respondent is responsible for violating this policy (i.e., engaging in Sexual Harassment), the decision-maker(s) will recommend appropriate remedies, including imposition of sanctions. The Title IX Coordinator will notify the Superintendent of the recommended remedies, so appropriate action can be taken.

The decision-maker(s) will provide the written determination to the Title IX Coordinator who will provide the written determination to the parties simultaneously.

In ultimately, imposing a disciplinary sanction/consequence, the Superintendent will consider the severity of the incident, previous disciplinary violations (if any), and any mitigating circumstances.

The District's resolution of a Formal Complaint ordinarily will not be impacted by the fact that criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

At any point in the grievance process, the Superintendent may involve local law enforcement and/or file criminal charges related to allegations of Sexual Harassment that involve a sexual assault.

The Title IX Coordinator is responsible for effective implementation of any remedies.

### **Appeal**

Both parties have the right to file an appeal from a determination regarding responsibility, or from the Title IX Coordinator's dismissal of a Formal Complaint or any allegations therein, on the following bases:

- A. Procedural irregularity that affected the outcome of the matter (e.g., material deviation from established procedures);
- B. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- C. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant(s) or Respondent(s) that affected the outcome of the matter.

The Complainant(s) may not challenge the ultimate disciplinary sanction/consequence that is imposed.

Any party wishing to appeal the decision-maker(s)'s determination of responsibility, or the Title IX Coordinator's dismissal of a Formal Complaint or any allegations therein, must submit a written appeal to the Title IX Coordinator within three (3) days after receipt of the decision-maker(s)'s determination of responsibility or the Title IX Coordinator's dismissal of a

Formal Complaint or any allegations therein.

Nothing herein shall prevent the Superintendent from implementing appropriate remedies, however, excluding disciplinary sanction, while the appeal is pending.

As to all appeals, the Title IX Coordinator will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.

The decision-maker(s) for the appeal shall not be the same person(s) as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator(s). The decision-maker(s) for the appeal shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant(s) or Respondent(s) and shall receive the same training as required of other decision-makers.

Both parties shall have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

The parties' written statements in support of, or challenging, the determination of responsibility must be submitted within five (5) days after the Title IX Coordinator provides notice to the non-appealing party of the appeal.

The decision-maker(s) for the appeal shall issue a written decision describing the result of the appeal and the rationale for the result. The original decision-maker(s)' determination of responsibility will stand if the appeal request is not filed in a timely manner or the appealing party fails to show clear error and/or a compelling rationale for overturning or modifying the original determination. The written decision will be provided to the Title IX Coordinator who will provide it simultaneously to both parties. The written decision will be issued within five (5) days of when the parties' written statements were submitted.

The determination of responsibility associated with a Formal Complaint, including any recommendations for remedies/disciplinary sanctions, becomes final when the time for filing an appeal has passed or, if an appeal is filed, at the point when the decision-maker(s) for the appeal's decision is delivered to the Complainant and the Respondent. No further review beyond the appeal is permitted.

## **Retaliation**

Neither the Board nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this policy, or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this policy, constitutes retaliation. Retaliation against a person for making a report of Sexual Harassment, filing a Formal Complaint, or participating in an investigation, is a serious violation of this policy that can result in imposition of disciplinary sanctions/consequences and/or other appropriate remedies.

Complaints alleging retaliation may be filed according to the grievance process set forth above.

The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited under this policy.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy shall not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

## **Confidentiality**

The District will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder (i.e., the District's obligation to maintain confidentiality shall not impair or otherwise affect the Complainant's and Respondent's receipt of the information to which they are entitled related to the investigative record and determination of responsibility).

## **Application of the First Amendment**

The Board will construe and apply this policy consistent with the First Amendment to the U.S. Constitution. In no case will a Respondent be found to have committed Sexual Harassment based on expressive conduct that is protected by the First Amendment.

## **Training**

The District's Title IX Coordinator, along with any investigator(s), decision-maker(s), or person(s) designated to facilitate an informal resolution process, must receive training on:

- A. the definition of Sexual Harassment (as that term is used in this policy);
- B. the scope of the District's education program or activity;
- C. how to conduct an investigation and implement the grievance process, appeals and informal resolution processes, as applicable; and
- D. how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interests, and bias.

All Board employees will be trained concerning their legal obligation to report Sexual Harassment to the Title IX Coordinator. This training will include practical information about how to identify and report Sexual Harassment.

## **Recordkeeping**

As part of its response to alleged violations of this policy, the District shall create, and maintain for a period of seven (7) calendar years, records of any actions, including any supportive measures, taken in response to a report or Formal Complaint of Sexual Harassment. In each instance, the District shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the District's education program or activity. If the District does not provide a Complainant with supportive measures, then the District will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken.

The District shall maintain for a period of seven (7) calendar years the following records:

- A. each Sexual Harassment investigation including any determination regarding responsibility, any disciplinary sanctions recommended and/or imposed on the Respondent(s), and any remedies provided to the Complainant(s) designed to restore or preserve equal access to the District's education program or activity
- B. any appeal and the result therefrom
- C. any informal resolution and the result therefrom, and
- D. all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

The District will make its training materials publicly available on its website.

## **Outside Appointments, Dual Appointments, and Delegations**

The Board retains discretion to appoint suitably qualified persons who are not Board employees to fulfill any function of the Board under this policy, including, but not limited to, Title IX Coordinator, investigator, decision-maker, decision-maker for appeals, facilitator of informal resolution processes, and advisor.

The Board also retains discretion to appoint two or more persons to jointly fulfill the role of Title IX Coordinator, investigator, decision-maker, decision-maker for appeals, facilitator of informal resolution processes, and advisor.

The Superintendent may delegate functions assigned to a specific Board employee under this policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, decision-maker, decision-maker for appeals, facilitator of informal resolution processes, and advisor, to any suitably qualified individual and such delegation may be rescinded by the Superintendent at any time.

## **Discretion in Application**

The Board retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the Board's interpretation or application differs from the interpretation of any specific Complainant and/or Respondent.

Despite the Board's reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the Board retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this policy are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, the Board retains discretion to revise this policy at any time, and for any reason. The Board may apply policy revisions to an active case provided that doing so is not clearly unreasonable.

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Legal

20 U.S.C. 1681 et seq., Title IX of the Education Amendments of 1972 (Title IX)  
20 U.S.C. 1400 et seq., The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)  
42 U.S.C. 2000c et seq., Title IV of the Civil Rights Act of 1964  
42 U.S.C. 2000d et seq.  
42 U.S.C. 2000e et seq.  
42 U.S.C. 1983  
34 C.F.R. Part 106  
OCR Revised Sexual Harassment Guidance (2001)  
20 U.S.C. 1092(F)(6)(A)(v)  
34 U.S.C. 12291(a)(10)  
34 U.S.C. 12291(a)(8)  
34 U.S.C. 12291(a)(30)