

- This is a new policy. Given the detailed regulations and the required grievance procedure in the new regulations, I thought it best to make this a stand-alone policy.
- Although the Title IX Coordinator could be an investigator, he/she cannot be a decision-maker; decision-makers must be different than the person investigating a formal complaint.
- Districts must specify at least one Title IX Coordinator, but depending on the size of the district, more than one coordinator could be identified (for example, one for secondary students and one for elementary students).
- The definition of sexual harassment has changed, and now includes specific definitions that come from the Violence Against Women Act, which definitions have typically been used more often in the post-secondary school context. Also, the law used to read that sexual harassment was “unwelcome conduct determined by a reasonable person to be severe, pervasive **or** persistent, as to **interfere with or limit** a student’s ability to participate in or benefit from school services, activities or opportunities.” The new definition is, “unwelcome conduct determined by a reasonable person to be so severe, pervasive **and** objectively offensive that it **effectively denies** a person’s equal access to the [district’s] education program or activity. The old definition came from OCR guidance and would generally allow more types of conduct to fall within the definition of sexual harassment. The new definition comes from language used by courts to define sexual harassment under Title IX and is a more narrow definition.
- There is a section in the policy entitled “Initial Response.” The action areas identified under this process must be taken by a district whether or not a formal complaint of sexual harassment is filed. This includes possible emergency removal of a student pending a formal complaint process or placing an employee accused of sexual harassment on administrative leave. However, these procedures are still subject to other federal law, such as the IDEA and ADA, so that if the accused is a student on an IEP, for example, districts would need to follow any applicable procedures under the IDEA before removing the student, such as conducting a manifestation determination.
- Within the formal complaint process, there is an optional live hearing procedure. K-12 schools are not required by the regulations to have a live hearing, which is why this section is optional. The guidance suggests that if districts do choose to have live hearings, they must be fair to both parties (so, for example, if the complainant requested a hearing but the respondent refused to consent, the district could not force a live hearing; an optional hearing procedure must require that it will only be held, for example, if both parties consent in writing). The optional procedure I have included itself gives districts options to choose whether they want to offer hearings at all, or whether they only will offer them for certain groups (e.g. only where employees are involved, only where high school students are involved, etc.). If hearings are permitted, the procedure for such hearing must be specified.
- The model policy includes an optional informal resolution process. This is optional because the new regulations do not require an informal process. Also, if one is provided,

it can only be used **after** a formal complaint is filed. So, essentially, this is a mediation/facilitation type process that could be used after a formal complaint is filed.

- The recordkeeping requirement is much more significant than it used to be, as districts must retain specified information for at least 7 years. All training materials must be posted/available through the district's website.

The purpose of these procedures is to secure prompt and equitable resolutions of complaints based on sex discrimination, including complaints of sexual harassment or sexual violence in violation of Title IX of the Education Amendments of 1972 (Title IX), and violation of district policies that prohibit these types of discrimination. These procedures apply only to complaints alleging discrimination prohibited by Title IX (including sexual harassment and sexual violence). Regardless of whether a formal complaint is filed as set forth herein, when this district has actual knowledge of sexual harassment in its education programs or activities against a person in the United States, it will respond promptly and in a manner that is not deliberately indifferent. For purposes of this policy, the district is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

These procedures shall be available in every school site administrative office, posted on the district website, and included in student handbooks *or other policy and procedure notices provided to students and families on an annual basis*.

DEFINITIONS

“Actual Knowledge” means notice of sexual harassment or allegations of sexual harassment to the district’s Title IX Coordinator or any official of the district who has authority to institute corrective measures on behalf of the district, or to any employee of an elementary or secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. As used in this definition, “notice” includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator by any person (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, or by mail, telephone or email, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. Although the Title IX Coordinator may sign a formal complaint of sexual harassment, the Title IX Coordinator is not a complainant for purposes of the procedures set forth herein.

“Day,” for purposes of this procedure, means the calculation of time in complaint processing and, except as otherwise expressly provided, shall exclude Saturdays, Sundays, and federal, state and school holidays or closures.

“District Official” means an employee of the school district, including, but not limited to, teacher, school counselor, school nurse, coach, activities director, principal, assistant principal or district administrator.

“Education Program or Activity” includes, for purposes of this policy, locations, events, or circumstances over which the district exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

“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 recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the district with which the formal complaint is filed.

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

“Responsible Administrator” means the Title IX Coordinator, *Superintendent, disciplinary committee, the authorized designee of these persons/committee, or the administrator designated by the Superintendent, as appropriate.*

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

- An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual’s participation in unwelcome sexual conduct;
- 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 recipient’s education program or activity; or
- Acts of sexual violence, including sexual assault (as defined by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act at 20 U.S.C. §1092(f)(6)(A)(v)), dating violence (as defined by the Violence Against Women Act at 34 U.S.C. §12291(a)(10)), domestic violence (as defined by the Violence Against Women Act at 34 U.S.C. §12291(a)(8)) and stalking (as defined by the Violence Against Women Act at 34 U.S.C. §12291(a)(30)).

“Supportive Measures” means non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal complaint or where no formal complaint of sexual harassment as defined under Title IX 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, campus escort services, mutual restrictions on contact between parties, changes in work

locations, leaves of absence, increased security and monitoring of certain areas of district schools and facilities, and other similar measures.

“Title IX Coordinator” means the employee or employees designated and authorized by the district to coordinate its efforts to comply with its responsibilities under Title IX.

FILING A TITLE IX GRIEVANCE COMPLAINT – TIME LIMITS AND DISMISSAL

The Title IX Coordinator or designee shall receive grievances, actively and independently investigate the merits of grievances, and assist the parties in resolving grievances. A complaint should be filed by the complainant as soon as possible after the time of occurrence of the alleged conduct. The Title IX Coordinator or designee may also sign a formal complaint to initiate an investigation. Complaints may be filed in person, by mail, or by email. Any complaints received by this district by telephone or verbally will be recorded by the district in written form. The complaint should set forth the date, place, and nature of the discriminatory conduct, and request that the district investigate the allegation of sexual harassment.

The complaint must be filed with the Title IX Coordinator or designee within one hundred eighty (180) days of the alleged discriminatory action or from the date the complainant could reasonably become aware of such occurrence. Failure of the complainant to comply with any time limitation in these procedures may result in dismissal of the complaint. The timelines set forth in herein may be waived at the discretion of the Title IX Coordinator or designee if such waiver is determined to be in the best interest of the individuals involved. Good cause for delay or extension of timeframes provided herein include considerations such as the absence of a party, a party’s advisor or witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The Title IX Coordinator or designee will provide written notice to all parties of the reason for the waiver.

Dismissal

Mandatory Dismissal

The district is required by law to investigate the allegations in a formal complaint. However, the district will dismiss formal complaints in the following circumstances:

- The conduct alleged in the formal complaint would not constitute sexual harassment as defined herein, even if proved; or
- The conduct alleged did not occur in the recipient’s education program or activity; or
- The conduct alleged did not occur against a person in the United States.

Within five (5) days after the filing of a formal complaint under this policy, the Title IX Coordinator shall either initiate investigation of the matters alleged or inform the complainant in writing that the matters alleged are not within the jurisdiction of the district to investigate under one or more of the conditions noted above and that the district will not carry out any further investigation. A dismissal of a formal complaint under any of the foregoing circumstances does not preclude the district from taking action under any other district code of conduct or other policy.

Permissive Dismissal

The district may dismiss a formal complaint or any allegations therein if, at any time during the investigation, one of the following circumstances arises:

- The complainant notifies the Title IX Coordinator in writing that he/she would like to withdraw the formal complaint or any allegations therein; or
- The respondent is no longer enrolled or employed by the district; or
- Specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal required or permitted under this policy, the district will promptly send written notice of the dismissal and the reason(s) therefore simultaneously to the parties.

CONSOLIDATION OF FORMAL COMPLAINTS

The district may consolidate formal complaints as to allegations of sexual harassment 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.

CONFIDENTIALITY

It is the policy of this district to process all grievances in a fair and expeditious manner. Confidentiality will be maintained to the greatest extent possible. Examples of exceptions to maintaining confidentiality include:

- Information required by law to be reported;
- Information imparted to others in supervisory positions in order to further an investigation or halt a discriminatory practice;
- Information given to the respondent in order to have sufficient information to respond to the allegations.

The district will take all reasonable requests to investigate and respond to a complaint consistent with a request by the complaining party not to disclose his/her name. However, such requests for confidentiality may limit the district's ability to adequately investigate and respond to the allegations raised in the complaint. Requests for confidentiality will therefore be evaluated in the context of the district's responsibility to provide a safe and nondiscriminatory environment for all students, and the request will be weighed against whatever factors the district deems relevant, including, without limitation:

- The complainant's age;
- Circumstances that suggest there is an increased risk of future acts of harassment and/or sexual violence under similar circumstances; and

- Whether the district possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence);

GRIEVANCE PROCESS

Initial Response

(a) **Reporting.** A complainant is encouraged to report allegations of sex discrimination, including sexual harassment, to a district official with the objective of resolving the matter promptly. Grievances under this section should be discussed with a district official who is not involved in the alleged discrimination or harassment. The district official to whom the report is made will promptly notify the Title IX Coordinator of the report.

(b) **Contact by Title IX Coordinator.** The Title IX Coordinator or designee will promptly contact the complainant 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.

(c) **Equitable Treatment.** Upon receipt of a report of sex discrimination, including sexual harassment, under this policy, the district will treat complainants and respondents equitably and will offer supportive measures to both. The district will follow the grievance process outlined herein before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent.

(d) **Emergency Removal or Administrative Leave.** The district may remove a respondent on an emergency basis after a report of sexual harassment where such removal is necessary to protect a student or other individual from immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment. Such removal will be based on an individualized safety and risk analysis. In the event of a decision to remove a respondent on an emergency basis, the respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal. Emergency removals under this policy do not affect the rights of a respondent under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act. Thus, for example, this policy does not require an emergency removal of a student where the district has determined that the threat posed by the student, arising from the sexual harassment allegations, is a manifestation of the student's disability, such that the district is constrained by IDEA requirements.

Where the complaint of sexual harassment involves an employee as the respondent, the district may place the employee respondent on administrative leave during the pendency of the formal grievance process. Any such administrative leave will be processed in accordance with district policies and procedures and applicable Idaho law. Administrative leave under this policy does not affect the rights of an employee respondent under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

Formal Complaint Procedures**Step 1: Reporting**

(a) A complainant may file a written, signed statement of the grievance with the Title IX Coordinator or designee. The Title IX Coordinator may also sign a formal complaint. The statement must fully set out the following information:

- The nature of the grievance;
- The remedy requested; and
- The signature of the grievant and the date signed.

(b) A grievance shall be made in writing and addressed to:

[Staff Member Name or Names, if more than one (for example, one for elementary students and one for secondary students, or one for employees and one for students, etc.)]

Address

Phone ##:

Fax ##:

Email address:

(c) The Title IX Coordinator or designee will notify the complainant and respondent(s) within a reasonable time frame that the complaint was received and is being processed. Such notice will include all of the following:

- Notice of the district's grievance process, *including the informal resolution process*, set forth herein;
- Notice of the allegations of sexual harassment (as defined herein), 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;
- Notice that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- Notice that the parties may have an advisor of their choice who may be, but is not required to be, an attorney; and that they may inspect and review evidence directly related to the allegations, including 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 conclusion of the investigation; and

- Notice of any provision in the district’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of investigation of the complaint, the district decides to investigate allegations about the complainant or respondent that were not included in the original notice, the district will provide notice of such additional allegations to the parties whose identities are known.

Step 2: Investigation.

(a) The Title IX Coordinator will oversee that an adequate, reliable and impartial investigation of the complaint is conducted by the principal or designee of the school site where the student is enrolled, the employee is assigned, and/or where the alleged discrimination occurred. Until a determination is made at the conclusion of the grievance process, the respondent will be presumed to not be responsible for the alleged conduct.

(b) In order to provide a neutral and objective investigation, neither the designated investigator nor other Responsible Administrator shall be a party to the complaint being investigated.

(c) In conducting the investigation, the designated investigator shall interview all parties identified in the complaint and other witnesses that the investigator determines may provide information relevant to resolving the complaint allegations. Both the complainant and respondent shall have the opportunity to identify witnesses, including expert witnesses, to be interviewed and provide documentation or other evidence for the designated investigator to review. Nothing in this policy shall limit the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. In conducting the investigation, the district will 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 the privilege has waived the privilege.

(d) The district’s investigation and resolution of the complaint does not allow the investigator, Responsible Administrator, Title IX Coordinator or any other district official 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 action 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 district obtains that party’s voluntary, written consent to do so. For parties who are under 18 years of age, such written permission shall be from the party’s parent or guardian.

(e) The district’s investigation and resolution process includes allowing the parties the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of the party’s choice (which may be an attorney), and not limiting the choice or presence of advisor for either party in any meeting or grievance proceeding; however, the district may establish restrictions

regarding the extent to which the advisor may participate in the proceedings, which restrictions will apply equally to both parties.

(f) Written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews or other meetings will be provided to all parties whose participation is invited or expected, with sufficient time for the party to prepare to participate.

(g) Both parties will 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 a 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 designated investigator will provide to each party and respective advisor(s), if any, the evidence subject to inspection and review in an electronic format or a hard copy. The parties will have at least ten (10) days after receipt of the evidence to submit a written response, which responses will be considered by the investigator prior to completion of the investigative report.

(h) The investigator will create an investigative report that fairly summarizes relevant evidence, which report will be provided to each party and their respective advisor(s), if any, *fourteen (14)* days prior to the time set for determination regarding responsibility. The report will be provided in electronic format or hard copy.

Step 3: Hearing and Resolution.

(a) *With or without a hearing*, after the designated investigator has sent the investigative report to the parties and before the time set for determination, each party will be (i) afforded the opportunity to submit written, relevant questions that a party wants asked of any party or witness; (ii) provided with the answers to such questions; and (iii) given the opportunity to ask limited follow-up questions. The Responsible Administrator(s) will explain to the party proposing the questions any decision to exclude a question as not relevant.

(b) In no case will questions and evidence about the complainant's sexual predisposition or prior sexual behavior be considered relevant, unless (i) 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 (ii) 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.

(c) *Live hearings may be held following completion of the question and answer process set forth in Step 3(a) herein where the allegations involve [choose: high school students, secondary students, students over the age of [xx] and/or employees]. Hearings will only be held if both parties agree in writing. In the event a live hearing is held, the Responsible Administrator(s) will provide the parties with written notice of (i) the time, date and place of the hearing; (ii) the right of the parties to have an advisor, who may be an attorney, attend the hearing*

with the party; and (iii) the right of the parties to appear and present evidence, including cross-examining adult witnesses who may appear, subject to any evidentiary rules provided for in this procedure. Such notice will be provided at least ten (10) days prior to the date set for hearing to allow the parties to prepare for the hearing.

(d) After the question and answer process set forth in Step 3(a) is completed, *and after a hearing, if one is held*, the Responsible Administrator(s) will issue a written decision regarding responsibility based on the preponderance of the evidence (i.e. it is more likely than not that discrimination did or did not occur). The decision will be based on an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence. Additionally, any credibility determinations made by the Responsible Administrator(s) may not be based on a person's status as a complainant, respondent or witness. The written decision will include:

- Identification of the allegations;
- A description of the procedural steps taken to investigate the allegations;
- The findings of fact supporting the determination;
- The conclusions regarding the application of the district's code of conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility; any disciplinary sanctions imposed on the respondent; and whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the complainant; and
- The procedures and permissible bases for the complainant and respondent to appeal the decision.

(e) The Responsible Administrator will provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final on the date that the Responsible Administrator provides the parties with written determination of the result of an appeal, if one is filed, or if an appeal is not filed, on the date which an appeal would no longer be considered timely.

Step 4: Appeal Rights.

(a) Within *ten (10) days* of the date the district provides the parties with a written determination regarding responsibility or notice of dismissal of the formal complaint or allegations therein, either the complainant or respondent may file a written appeal of such determination or dismissal with the [choose: *board of trustees, superintendent or designee*] (the "appellate decision-maker"), on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- 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

- 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 or respondent that affected the outcome of the matter.

(b) Upon receipt of an appeal, the appellate decision-maker will notify the other party in writing of the appeal. The parties shall have *fifteen (15) days* after receipt of the appeal to submit a written statement in support of, or challenging, the outcome. The appellate decision-maker(s) will 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.

(c) *Within ten (10) days* of convening, the board shall issue a written decision describing the result of the appeal and the rationale for the result. The decision shall be submitted to the Title IX Coordinator and the parties to the grievance simultaneously.

(d) The decision of the appellate decision-maker with regard to implementing the decision is a final decision and is not appealable.

(e) The complainant is not precluded from filing complaints at any time during or after the grievance process with state or federal agencies listed below.

Step 5: Complaints to an External Agency.

If a party is not satisfied with a decision, the party may file a complaint with the following external agencies:

Idaho Human Rights Commission
317 W. Main Street
Boise, ID 83720
Phone: (208) 334-2873

Office for Civil Rights
U.S. Department of Education
915 Second Ave., Suite 3310
Seattle, WA 98174-1099
Phone: (206) 607-1632
Fax: (206) 607-1601

INFORMAL RESOLUTION [Note: This section is optional; districts are not required to provide an informal resolution process].

The district will not require as a condition of enrollment, continued enrollment, or employment or continued employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment. Similarly, the district will not require the parties to participate in an informal resolution process. However, after a formal complaint is filed, and at any time prior to reaching a determination regarding responsibility, the district may facilitate an informal resolution process that does not involve a full investigation and adjudication in any case that does not involve allegations that an employee of the district sexually harassed a student.

After a formal complaint is filed, the Title IX Coordinator will notify the parties of their right to participate in an informal resolution of the complaint. Such notice will provide:

- *The allegations in the complaint;*
- *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;*
- *Notice of the parties' right to withdraw from the informal resolution process at any time prior to agreeing to a resolution; and*
- *Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.*

The parties must agree in writing to participate in the informal resolution process and submit such written consent to the Title IX Coordinator. The Title IX Coordinator shall then select a facilitator to conduct the informal resolution process with the parties, which facilitator shall be from a different school than that school where the parties attend or are employed, and who shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The identity of the facilitator shall be provided to the parties in writing, together with notice of the date and time set for the facilitated meeting. The facilitator shall have discretion as to how to conduct the facilitated meeting, based on the facts of the case and consistent with training, district policies and applicable law (e.g., the facilitator may decide to keep the parties in separate rooms during the meeting or otherwise set reasonable ground rules for conducting the facilitation, including what information will be shared with the other party during the meeting).

The district will maintain a record of any informal resolution and the result therefrom in accordance with the recordkeeping requirements of this policy.

SUPPORTIVE MEASURES PENDING FINAL DETERMINATION OF THE COMPLAINT

Title IX requires the district to take steps to ensure equal access to its education programs and activities and protect the parties as necessary, including providing supportive measures before the final outcome of an investigation. The district will take these steps promptly once it has notice of a sexual harassment or sexual violence allegation and will provide the complainant with periodic updates on the status of the investigation. Supportive measures may include modifications in academic or extracurricular activities and schedules, restrictions on contact between the parties, monitoring of certain areas of campus, and other similar accommodations.

The specific supportive measures implemented and the process for implementing those measures will vary depending on the facts of each case. The Title IX Coordinator or designee should consider a number of factors in determining what supportive measures to take, including, for example, the specific needs expressed by the parties; the age of the students involved; the severity or pervasiveness of the allegations; any continuing effects on the complainant; whether the

complainant and respondent share class, transportation or extracurricular activities; and whether other judicial measures have been taken to protect the complainant (e.g., civil protection orders).

DISCIPLINARY SANCTIONS OR REMEDIES

Employees and students may be disciplined if it is determined through this procedure that sexual harassment, as defined herein, or retaliation for reporting, complaining, participating, testifying, assisting or refusing to participate in any manner in an investigation, proceeding, or hearing under this procedure, occurred. In no case will disciplinary sanctions or other actions that are not supportive measures be implemented against a respondent until after a determination of responsibility has been made pursuant to this procedure, including through an informal resolution process, if any.

The Responsible Administrator, including any appellate decision-maker, may impose remedies or sanctions authorized by district policy and applicable state or federal law. Remedies will be designed to restore or preserve equal access to the district's education program or activity. Such remedies may include the same individualized services described as supportive measures herein; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. Such remedies may include, but are not limited to:

For students:

- Short or long-term suspension;
- Expulsion;
- Behavior contracts;
- Limitations on extracurricular activities;
- Changes in class schedules.

For employees:

- Suspension;
- Termination of employment;
- Letters of reprimand;
- Reassignment;
- Referral to the Idaho Professional Standards Commission.

If the remedy imposed is a long-term suspension or expulsion of a student or termination of any employee, any such discipline will be imposed in accordance with applicable due process rights under district policy or state law.

NO RETALIATORY ACTION

Intimidation, harassment or retaliation against any person filing a grievance or any person participating in the investigation or resolution of a grievance is a violation of law and constitutes

the basis for filing a separate grievance. 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 or its implementing regulations, constitutes retaliation. 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 does not constitute retaliation, provided, however, that a determination of responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith. District students, employees or visitors shall not retaliate against an individual who in good faith reports, associates with the individual reporting, participates in the investigation, or investigates a grievance filed in accordance with this procedure. Any person engaged in retaliatory actions may be subject to disciplinary actions.

RETENTION OF RECORDS

The district will retain all of the following records for a period of seven (7) years:

- Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the district's education program or activity;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom;
- For each report of sexual harassment, whether or not a formal complaint was filed, the district will create and maintain records of any actions take, including supportive measures; why the response was not deliberately indifferent; measures taken to restore or preserve equal access to the district's educational program or activity; and, if no supportive measures were taken, why that was not deliberately indifferent; and
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. All such training materials will be made publicly available on its website or, if the district does not maintain a website, such materials will be made available upon request for inspection by members of the public.

In the event an investigation reveals a violation of the district's Title IX grievance policy or these procedures by an employee or student, any disciplinary action taken as a result of the investigation will be placed in the appropriate employee or student file. Upon separation of employment, any investigative file maintained pursuant to this policy involving an employee shall be moved into the personnel file and shall be redacted as required by Idaho Code §33-1210.

FALSE COMPLAINTS

Individuals who knowingly file false or misleading complaints alleging harassment, discrimination or retaliation are subject to appropriate disciplinary action, including, but not limited to, dismissal of the complaint and discipline under applicable board policy.

TRAINING

The district will ensure that the Title IX Coordinator(s), investigators, decision-makers, and any person who facilitates an informal resolution process receive training on the definition of sexual harassment as set forth herein, the scope of the district’s education programs or activities, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. In addition, decision-makers will receive training on any technology to be used at live hearings and on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant. All investigators will be trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence.



LEGAL REFERENCE:

Title IX of the Education Amendments of 1972 (20 USC Section 1681)
 Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act
 20 U.S.C. §1092(f)(6)(A)(v) (definition of sexual assault)
 Violence Against Women Act
 34 U.S.C. §12291(a)(8) (definition of domestic violence)
 34 U.S.C. §12291(a)(10) (definition of dating violence)
 34 U.S.C. §12291(a)(30) (definition of stalking)

34 CFR Part 106 (Title IX Regulations)
 Idaho Code §33-1210 (Information on Past Job Performance)
 Idaho Code §67-5901 *et seq.* (Idaho Human Rights Act)

CROSS-REFERENCE:

Civil Rights Grievance Policy – Policy 290
 Non-Discrimination in Employment – Policy 410
 Sexual Harassment – Policy 414
 Student Harassment – Policy 506
 Prohibition Against Harassment, Intimidation and Bullying – Policy 506.50

ADOPTED: August 26, 2020

AMENDED:

**Language in text set forth in italics is optional.*