

## **Procedure © 1-203.A Equal Opportunity - Prohibited Sex Discrimination (Title IX) - Grievance Procedure**

### **A. General Procedures**

The District shall follow grievance procedures that provide for the prompt and equitable resolution of formal complaints from students and employees alleging sexual harassment.

The Title IX coordinator, investigator, and decision maker may be the same person. The decision maker for an appeal may not be the decision maker, the investigator, nor any person who made a decision to dismiss the complaint. The Title IX coordinator may delegate duties to another District employee.

If any person involved in an investigation has a concern that the investigator, decision-maker, or decision maker on appeal may have a bias or conflict of interest, or for any other reason, the Title IX Coordinator will evaluate the situation and determine in their sole discretion to reassign a different investigator, decision-maker, or decision maker on appeal. In their sole discretion, the Title IX Coordinator may choose to retain an outside investigator, decision-maker, or decision maker on appeal.

### **B. Supportive Measures**

The Title IX coordinator must offer and coordinate supportive measures that do not unreasonably burden either party and are designed to protect the safety of the parties or the educational environment. Supportive measures may also be designed to provide support during the grievance procedures or during the informal resolution process. Supportive measures may not be imposed for punitive or disciplinary reasons. Any party may request a modification or reversal of the decision to provide, deny, modify, or terminate supportive measures applicable to them, which decision must be made by an impartial employee who is someone other than the employee who made the challenged decision and who has the authority to modify or reverse the decision. The impartial employee will determine whether or not the decision to provide, deny, modify, or terminate the supportive measures was inconsistent with Title IX regulations and make

appropriate modifications. A party also has the right to seek modification or termination of a supportive measure applicable to that party if circumstances materially change.

### C. Removal

Prior to a determination of responsibility for the conduct alleged, the District may remove a student who is a Respondent from the District's educational program or activity on an emergency basis when, after completing an individualized safety and risk analysis, it is determined that an imminent and serious threat to the health or safety of a Complainant or to any students, employees, or other persons arising from the allegations of sex discrimination justifies removal. The District must provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. If a student has an individual education program (IEP) or a Section 504 plan, the decision to remove the student on an emergency basis must be coordinated with the District's special education staff and in compliance with relevant requirements of the Individuals with Disabilities in Education Act (IDEA) or Section 504 of the Rehabilitation Act (Section 504).

The District may place an employee who is a Respondent on administrative leave while allegations are investigated and resolved in accordance with this grievance procedure.

The District will attempt to complete the grievance process within sixty (60) business days, not including any time for an appeal of the Determination. The grievance process may be temporarily delayed and/or timelines may be extended for good cause with written notice to the parties explaining the reason(s) for the extension.

### D. Requisite Notice

An oral or written request to the District that can be objectively understood as a request for the District to investigate and make a determination about alleged discrimination under Title IX against a Complainant suffices as a complaint. The Complainant must be a District student or District employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at the time the conduct occurred, or a District student or District employee or any other person who was attempting to participate in the District's education program or activity at the time conduct that could constitute sex discrimination under Title IX occurred. A complaint may be submitted by any person.

A confidential District employee is one whose communications are privileged or confidential under federal or state law. A confidential employee who receives information while that employee is functioning within the scope of duties to which privilege or confidentiality applies must inform any person who discloses conduct that may reasonably constitute sex discrimination under Title IX both how to contact the Title IX coordinator and that supportive measures may be available. A non-confidential District employee must notify the Title IX coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX carried out against a Complainant.

#### E. Filing a Complaint

Upon receipt of a request for the District to investigate and make a determination about alleged Title IX discrimination, the Title IX coordinator will offer the Complainant the opportunity to make a written complaint. If a verbal report of Title IX discrimination is made, the Complainant or the Complainant's parent, guardian, or other authorized legal representative will be asked to submit a written complaint. If the Complainant or lawful representative refuses or is unable to submit a written complaint, the Title IX coordinator may facilitate providing a written summary of the complaint so that notice may be given to the Respondent.

If a Complainant does not want to make a complaint or withdraws the complaint, the Title IX coordinator may initiate a complaint as permitted by federal regulation based upon a determination that the allegations present an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents the District from ensuring equal access on the basis of sex to its education program or activity. The Title IX coordinator must document the reasons for the Complainant's preference not to pursue the complaint or to withdraw the complaint.

If the Complainant or Respondent is a student with a disability, the Title IX coordinator must consult with one or more members of the IEP team or Section 504 team as appropriate to determine how to comply with IDEA and/or Section 504 throughout the implementation of the grievance procedures.

After the preparation of the complaint, the Title IX Coordinator will provide written notice to the allegations to the Complainant and the Respondent and will provide information regarding the grievance process, including any informal resolution process. The notice of the allegations must include:

- Sufficient detail to allow the Respondent to prepare a response, including a description of the conduct alleged, the date, and location of the conduct, and the names of the Complainant, and other involved parties, if any;

- A statement that the Respondent is presumed not to be responsible for the conduct and that responsibility will be determined at the conclusion of the process;
- A statement that retaliation is prohibited;
- A notice of the Complainants and Respondent's rights to have an attorney or non-attorney advisor;
- Notice of the right of Complainant and Respondent to inspect and review any relevant evidence;
- Notice that if in the course of the investigation additional allegations of sex discrimination by the Respondent toward the Complainant are discovered, those allegations may be consolidated in the complaint, with notice of additional allegations made to the parties; and
- The prohibition on providing false statements or evidence in connection with the complaint investigation.

#### F. Duty to Report Child Abuse/Law Enforcement Investigation

Title IX complaints may include violations addressed in [A.R.S. § 13-3620](#). Duty to report abuse, physical injury, neglect and denial or deprivation of medical or surgical care or nourishment of minors; medical records; exception; violation; classification; definitions. Any allegations classified by statute as "reportable offenses" must be reported as such to local law enforcement authorities or Department of Child Safety, as not reporting a reportable offense is classified as a Class 6 Felony.

When the Title IX Coordinator, investigator, decision-maker, or decision-maker on appeal reasonably believe that a law enforcement investigation will commence in regard to the complaint reported to the District, they reserve the right to temporarily suspend the grievance process and investigative efforts. The Title IX Coordinator will continue or implement supportive measures as appropriate. The District may determine (in conjunction with the law enforcement authorities) that the continuation of the internal Title IX grievance process is permissible during a pending law enforcement investigation. The Title IX grievance process will resume as soon as the District becomes aware that the law enforcement investigation has concluded or upon approval of the law enforcement agency. A finding by law enforcement that no wrongdoing occurred will not determine the outcome of the District's investigation but will be considered along with the other evidence.

#### G. Informal Resolution

At any time before a determination is reached, allegations may be resolved informally, unless it is alleged that a District employee is engaged in sex-based harassment against a District student.

As part of the informal resolution process, the Title IX Coordinator may engage in interviews and other fact finding. Either party may withdraw from an informal resolution process at any time before agreeing to a resolution and resume the grievance procedures. Available methods of informal resolution include arbitration, mediation, and restorative justice procedures. Once an informal resolution is agreed to by the parties, it becomes binding. The Title IX Coordinator has the discretion to decline informal resolution for some complaints, including complaints of sexual violence, and instead require a formal investigation.

Available methods of informal resolution include arbitration, mediation, and restorative justice procedures. Once an informal resolution is agreed to by the parties, it becomes binding.

Both parties to a formal complaint must voluntarily agree in writing to participate in an informal resolution process. No party is ever required to participate in an informal resolution process and intimidation, threats, and coercion are expressly prohibited. Intimidation, threats, and coercion regarding participation in an informal resolution process are expressly prohibited.

Informal resolution will proceed pursuant to the procedures set out below. Efforts to resolve the formal complaint via informal resolution should not extend longer than ten (10) business days unless for good cause (such as unavailability of the parties, state-wide testing, etc.). If the informal resolution process takes more than ten (10) business days for good cause, the Title IX Coordinator may send a Notice of Temporary Delay for Good Cause if it appears that the District will not be able to meet its deadline to complete the Title IX grievance process.

Either party may withdraw from an informal resolution at any time before agreeing to a resolution and resume the grievance process. Once an informal resolution is agreed to by the parties, it becomes binding.

## H. Procedures for Informal Resolution

After receipt of a complaint of sex-based discrimination pursuant to the District's Title IX Policy, the Title IX Coordinator will determine whether the complaint is appropriate for referral to informal resolution, a written invitation to participate in an informal resolution process will be sent to both parties. The parties may agree to participate in the informal resolution process at any point in the grievance process prior to the issuance of a determination of responsibility letter by the decision maker.

If both parties return the Consent to Participate forms, the Title IX Coordinator or designee will initiate the informal resolution process within five (5) business days of receipt of both signed Consent to Participate forms. The Title IX Coordinator will designate an Informal Resolution Facilitator. Even if the parties do not agree to participate in informal resolution at the outset of the grievance process, the parties may agree to participate in informal resolution at any point in the grievance process prior to the issuance of a determination of responsibility letter by the decision-maker.

Informal resolution facilitator ("facilitator"): this individual may be the Title IX Coordinator or another individual who has been trained on the District's Title IX Policy and procedures, is free from conflicts of interest and bias, and has been trained to serve impartially without prejudging the facts at issue. The facilitator will be responsible for contacting the parties within five (5) business days of receipt of the signed Consent to Participate forms to initiate the informal resolution process.

The facilitator will contact the complainant and the respondent, separately, to discuss the following:

- A. Whether the party would like to have a face-to-face meeting (in-person or virtual) with the other party to discuss informal resolution;
- B. The allegation(s) and facts each party believes are relevant to the allegation(s); and
- C. What terms the party believes would resolve the complaint without need for investigation and determination.

After communicating with both parties, the facilitator will determine whether to schedule a face-to-face meeting or to engage in "shuttle diplomacy" by discussing with each party separately the terms for agreement proposed by the other party. In making this determination, the facilitator should give primary deference to the wishes of the complainant regarding whether s/he wishes to meet face-to-face with the respondent but should also consider whether a face-to-face meeting is likely to be emotionally difficult for either party or ineffective in working toward resolution.

## I. Resolution Agreement

If the parties agree to resolve the formal complaint without proceeding through investigation and a final determination, the terms of that agreement must be in writing and signed by both parties. A non-exhaustive list of examples of terms that may be included in an informal resolution agreement are as follows:

- Removal of the respondent from the educational setting via suspension or expulsion.
- Removal of respondent from the same educational setting as complainant (reassignment to an alternate location or change of classes, for example).
- Written or verbal apology from respondent to complainant.
- Agreement that respondent will attend counseling (provided outside of the school setting).
- Non-contact or non-communication agreements between the parties.
- Participation by either or both parties in an age-appropriate training to address the parties' understanding of sex discrimination and to mitigate reoccurrence of the sex discrimination;
- No admission of responsibility by respondent.
- Non-disclosure of the agreement as to the parties.
- Consequences of a breach of any term of the agreement (for example, an agreement might include a term that states that if a party breaches a non-disclosure agreement, that party will be reassigned to an alternative educational setting).

The District is not a party to the resolution agreement. The Facilitator should confirm the feasibility of any terms to which the parties have agreed that implicate an administrative action by the District prior to the finalization and signing of a resolution agreement. Once an agreement is finalized, the District will take reasonable steps to ensure that it can be implemented on school property and at school-sponsored events.

#### J. Confidentiality of the Informal Resolution Process

Information or evidence exchanged during an informal resolution process is not confidential as to the Title IX grievance process if a resolution agreement cannot be reached. Either party may share information or evidence obtained during the informal resolution process with the investigator. The Facilitator may not be a witness during investigation and the Facilitator's notes will not be shared with the parties and will not become part of the investigation file.

An informal resolution agreement itself will not be a confidential document and may be subject to a public records request, a valid subpoena for records, or data request from an enforcement agency such as the Office for Civil Rights of the U.S. Department of Education. Any resolution agreement provided as a public records request will redact all personal identifying information as permitted by law.

#### K. Summary Dismissal

If the Title IX Coordinator or investigator determines that the allegations in a formal complaint, with all facts assumed to be true for this purpose, do not meet the definition of sex discrimination under the applicable Title IX regulations, or did not occur in the District's educational program or activity, the Title IX Coordinator shall dismiss the complaint. The Title IX Coordinator may dismiss a formal complaint if the Complainant requests withdrawal of the complaint; if, after taking reasonable steps, the Respondent cannot be identified; or if the Respondent withdraws from the District (student) or terminates employment with the District (employee). If a complaint is dismissed, supportive measures must be offered to the parties as appropriate.

Upon dismissal of a formal complaint or any allegations contained in a formal complaint, the Title IX Coordinator will promptly and simultaneously provide written notice of the dismissal and the reason(s) for the dismissal to the Complainant and Respondent. If a complaint is dismissed, the District may take appropriate disciplinary action against the Respondent under its employee or student code of conduct and procedures related thereto if warranted. Upon dismissal, the Title IX coordinator must promptly notify the Complainant of the



basis for dismissal and that the dismissal may be appealed. If the dismissal occurs after the Respondent has been notified of the allegations, the Title IX coordinator must also notify the Respondent of the dismissal and the basis for the dismissal simultaneously with the notice of dismissal provided to the Complainant.

#### L. Investigation

The investigation will be premised on a presumption that the respondent is not responsible for the alleged act(s) of sexual harassment or sex-based discrimination, and both parties will be treated equitably during the investigation. The burden is on the District to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred and if the Respondent committed the acts determined to be sex discrimination.

The Complainant, the Respondent, and any witnesses are prohibited from knowingly making a false statement or providing false evidence in connection with a Title IX investigation. The District may take disciplinary action against any individual who makes false statements.

Both the complainant and the respondent will have a reasonable opportunity to present witnesses and other evidence to the investigator. The investigator will meet with each party and give them at least 24 hours' advance written notice of the date, time, location, and purpose of any interview that will be conducted. The District will not restrict the ability of either party to discuss the allegations and gather evidence related to the allegations of the formal complaint.

The designated investigator will interview the Complainant, the Respondent, any witnesses identified by either party, and will review relevant records. In no event will a party be subjected to any disciplinary sanctions or consequences for refusing or failing to participate.

Before the investigator prepares the final investigation report, the Complainant, the Respondent, and their advisors (if any) will be provided with an equal opportunity access relevant and permissible evidence. If appropriate, the evidence will be provided to the parties in an electronic format and manner that does not permit copying or downloading of the evidence. Parties and their advisors will be required to sign a non-disclosure agreement prior to receiving copies of this

evidence in an electronic format or printed copy. The evidence provided must include any evidence that the investigator does not intend to rely upon, and any exculpatory or inculpatory evidence from any source.

Within ten (10) business days of the date on which the parties were provided with access to the evidence or otherwise notified by the investigator that they could make an arrangement to view the evidence, the parties may prepare and submit to the investigator a written response to the evidence, which the investigator will consider in preparing the written investigation report. In cases in which there is more voluminous evidence that will require more time for the parties to process, the investigator may extend the ten (10) business days and provide notice of the extended date to the parties. Following the expiration of the date on which the parties may provide responses to the evidence, the investigator will promptly prepare a written investigation report that fairly summarizes the relevant and permissible evidence discovered during the investigation and provide that to the parties.

#### M. Determination of Responsibility

The written investigation report and any responses submitted by the Complainant and/or Respondent will be provided to the Decision Maker (if the decision maker is not the same person as the investigator), who will make the determination as to whether sex discrimination occurred based on the preponderance of the evidence standard.

If the decision maker is not the same person as the investigator, and the credibility of one or more parties or witnesses is in dispute and relevant to evaluating one or more allegations of sex discrimination, the decision maker has the discretion to either: (1) convene an individual meeting with the party or witness and ask relevant questions relating to credibility or evaluation of the allegations; or (2) invite each party to propose questions that the party or witness would like to have asked by the investigator or the decision maker during one or more individual meetings, including follow-up meetings. If the decision maker invites the parties to submit questions, the decision maker must determine whether a proposed question is relevant and permissible. If a party submits a question that is unclear or harassing, the decision maker must give the party an opportunity to clarify or revise that question, and if the party sufficiently clarifies or revises a question, it must be asked.

If the decision maker is the same person as the investigator, the decision maker will provide each party with an opportunity to submit written, relevant questions for any party or witness within five (5) business days of the date on which the decision maker is provided with a copy of the final written investigation report and any responses to the report. If written questions are submitted, the Decision Maker will promptly provide the questions to the appropriate individual so the individual can provide answers to the questions. Answers to the questions must be provided to the Decision Maker within five (5) business days of the date on which they are provided. The Decision Maker will promptly provide each party with the answers to the questions and allow for additional, limited follow-up questions in writing from both the complainant and respondent within three (3) business days. If written follow-up questions are submitted to the Decision Maker, the Decision Maker will promptly obtain the answers and provide both parties with the responses to the additional questions. Any questions regarding a complainant's prior sexual behavior or sexual predisposition will be deemed irrelevant unless they are offered to provide evidence that someone other than the Respondent committed the alleged misconduct or are offered to prove consent.

No sooner than ten (10) business days after receiving the investigation report, the Decision Maker will issue a written determination of responsibility (the "Determination") that includes:

- A statement of the allegations;
- A description of the procedural steps taken from 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;
- The findings of fact supporting the Determination;
- 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 of whether sex discrimination occurred, and, if so, any disciplinary sanctions the District imposes on the Respondent, and any necessary remedies designed to preserve the Complainant's equal access to the District's education program or activity; and
- A description of the right to an appeal, how to request an appeal, and the permitted bases for an appeal.

The deadline for the Decision Maker to issue the Determination may be extended for good cause at the Decision Maker's sole discretion. The Determination must be based upon a preponderance of the evidence (i.e., whether it is more likely

than not that the violation occurred). The complainant and the respondent will be notified concurrently of the Determination.

Students found to have violated Title IX will be referred for potential disciplinary action. Employees found to have violated Title IX will be subject to employment actions, including but not limited to discipline or termination of employment. The Title IX coordinator shall also coordinate the provision and implementation of remedies to the Complainant and other persons identified as having had equal access to the District's education program limited or denied by sex discrimination.

#### N. Appeals

Either the complainant or the respondent may appeal from: (a) the Determination regarding a formal complaint; (b) the dismissal of a formal complaint. The appealing party must submit a written notice of appeal that includes the bases of the appeal to the Title IX Coordinator within ten (10) business days of the date of the Determination or the dismissal of the complaint. No hearing will be held for an appeal.

Written notice of the appeal will be provided to both parties by the District. Either party may file a written response in support of or challenging the Determination/dismissal and the bases for the appeal within five (5) business days of the date on which written notice of the appeal was provided to all parties.

An appeal may be filed on the following bases only:

- A procedural irregularity affected the outcome of the matter;
- Newly discovered evidence that could affect the outcome of the matter and that was not available at the time the Determination was made; and/or
- The Title IX Coordinator, the investigator, or the Decision Maker had a conflict of interest or bias that affected the outcome of the matter.

The Parties will simultaneously be provided with a written decision regarding the appeal, which will describe the result of the appeal and the rationale for the decision.

## O. Confidentiality and Retention of Investigation Information and Records

Except as necessary to complete a thorough and effective investigation and grievance process under Policy 1-203 and as required by law or District Policy, the identity of Complainants, Respondents, and witnesses, information related to investigations; evidence gathered; and records created during investigations will be maintained in strict confidence.

In implementing this Policy, the District will comply with state and federal laws regarding the confidentiality of student and employee records, including but not limited to the Family Educational Rights and Privacy Act. Information and records regarding any disciplinary sanctions imposed on an employee or student will be maintained and disclosed in the same manner as any other disciplinary record, provided that no disciplinary record shall indicate that discipline was determined through the Title IX process.

The Title IX Coordinator will retain investigation files for a time period of no less than seven (7) years.

The records maintained by the District will document that the District's response to allegations of sex discrimination and what measures were taken to restore or preserve equal access to the District's educational program or activity. If the District did not offer supportive measures in response to a report made under this Policy, the District's records will document why no supportive measures were offered.

## P. Training

The District will provide annual training to employees on identifying and reporting acts that may constitute discrimination, harassment, or retaliation. The Title IX Coordinator, investigators, decision-makers, decision makers on appeal, and any District employees who are designated to facilitate informal resolution processes

will receive additional training on this Policy and implementation of the grievance process at least as often as required by federal regulations implementing Title IX.

**Flagstaff Unified School District**