



## 200.30.2A Title IX Sexual Harassment Prohibited Conduct and Grievance Process

The purpose of this policy is to support victims of sexual harassment. This policy is to support and protect students and staff. IMS prohibits discrimination/misconduct on the basis of sex. Anyone regardless of race, sexual orientation, disability, or gender status may be a victim or perpetrator of sexual harassment. Sexual harassment might consist of verbal, physical or other types of misconduct that target a person based on their sex and that the person finds unwelcome. A school's enforcement of Title IX must be consistent with everyone's free speech rights.

### **Definition of Sexual Harassment and other terms used in policy:**

**Sexual Harassment:** Sexual harassment is the conduct on the basis of sex that meets on or more of the following conditions:

1. "Quid pro quo" harassment. Staff member use of sexual conditioning as an educational benefit or service on an individual's participation in unwelcome sexual conduct. Quid pro quo may be more identifiable as a school employee but the other two definition areas can apply to any person, including students, any person may perpetuate the other two areas of misconduct.
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a school's educational program or activity.
3. "Sexual assault", "dating violence", "domestic violence" or "stalking" as those terms are defined under the other Federal laws called the Clery Act and the Violence Against Women Act.

**Investigator:** The investigator is the school official responsible for investigating and responding to a formal complaint.

**Decision-Maker:** The decision-maker is the school official responsible for making a determination regarding responsibility in response to an investigation of sexual harassment triggered by a formal complaint. This person can not be the Title IX Coordinator.

**Complainant:** The complainant is the individual(s) who is alleged to be the victim of conduct that could constitute sexual harassment.

**Respondent:** The respondent is the individual(s) who has been reported to be the perpetrator of

**Disciplinary Sanctions:** Disciplinary sanctions are consequences imposed on a respondent when the respondent is found responsible for sexual harassment.

**Report:** A report is an oral or written notification that an individual is an alleged or suspected perpetrator or victim of sexual harassment.

**Formal Complaint:** A formal complaint is a document signed and filed with the Title IX coordinator by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that school officials investigate the allegation(s). At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activities of the school system.

**Grievance Process:** Grievance process means the process for investigating and reaching a final determination of responsibility for a formal complaint of sexual harassment.

**Investigative Report:** The investigative report is a written account of the findings of the investigation conducted in response to a formal complaint.

**Remedies:** Remedies are individualized measures provided to a complainant designed to restore or preserve the complainant's equal access to the education program and activities of the school system when a respondent is found responsible for sexual harassment.

**Supportive Measures:** Supportive measures are 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 school system's education program and activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the school system's educational environment, or deter sexual harassment.

**Title IX Coordinator:** The Title IX coordinator is a school official who is designated to coordinate the school system's response to sexual harassment and allegations of sexual harassment. Contact information for the Title IX coordinator is posted on the school system's website.

**Actual Knowledge:** "Actual knowledge" means a school employee has notice of sexual harassment or allegations of sexual harassment.

**Education Programs and Activities:** This includes locations, events, and circumstances where a school exercises substantial control over the context of the alleged harassment and the person accused of the committing sexual harassment. Schools must always respond to sexual harassment that happen in school related circumstances such as on a field trip, academic conferences, or on a bus. A school's duty to respond to sexual harassment does not relate directly to whether the misconduct happened on campus or off campus.

**Reporting of Sexual Harassment:** Actual knowledge is not limited to a school official (administrator, head of school, etc.). Any employee (e.g., aide, specials teacher, EC coordinator, counselor, social worker, psychologist, teacher, substitute, or contracted custodian) has notice of sexual harassment, IMS shall respond and investigate. A report to any school employee will begin the notification process. Any person, whether the alleged victim or a parent, friend, or bystander, has the right to report sexual harassment. The Title IX Coordinator can be given notice of sexual harassment by phone, email, mail at anytime day or night. Reports can be verbal or written.

**Student Reports:** Any student who believes he or she is a victim of sexual harassment occurring in the school system's education programs or activities is encouraged to report the matter to the Title IX coordinator. Reports may also be made to a teacher, counselor, administrative staff, teacher assistant, or any other school employee. Reports may be made online through [Title IX Grievance Form\(LINK\)](#).

**Mandatory Reporting by School Employees and Board Members:** Any employee or member of the board of directors who has actual knowledge of sexual harassment or allegations of sexual harassment occurring in the education program or any activity of the school system must report that information immediately to the Title IX coordinator.

Any of the following confers "actual knowledge" and must be reported immediately:

- a. a report of sexual harassment from a student or other person;
- b. the employee or board member witnesses conduct that is or reasonably could be sexual harassment;
- c. the employee or board member discovers evidence of sexual harassment, such as sexualized graffiti on school property, or otherwise has reliable information or reason to believe that a student or employee may have been sexually harassed in violation of this policy, even if no one has reported the sexual harassment.

Employees who observe an incident of harassment are expected to intervene to stop the conduct in situations in which they have supervisory control over the perpetrator, and it is safe to do so. An employee with actual knowledge of possible sexual harassment in violation of this policy who does not promptly report the conduct and/or take proper action as required by this subsection, or who knowingly provides false information about the incident, will be subject to disciplinary action, up to and including dismissal. Any doubt about whether particular conduct is possible sexual harassment must be resolved in favor of reporting the conduct.

### **Written Grievance Procedures/Process**

School grievance procedures can not treat people differently on the basis of sex when the school investigates or reaches determination regarding responsibility.

The following are required for a written complaint:

- 1) The report should include the date of the report, the date of the incident, persons involved, a description of the incident, and any supporting documentation.

- 2) Reports, other than mandatory reports by employees, may be made anonymously, but anonymous reports may limit the school system's ability to respond fully if the alleged victim is not identified.
- 3) Reports by students and third parties can be made at any time. During non-business hours, reports can be made by using the contact information for the Title IX coordinator provided on the school website or by **filling out the form on the school website**. A report should be made as soon as possible after disclosure or discovery of the facts related to the report. Delays in reporting may impair the ability of school officials to investigate and respond to any subsequent formal complaint.

Once the report is received,

- 1) The Title IX coordinator shall promptly contact the complainant and the complainant's parent or guardian confidentially. This contact must occur within three days, excluding weekends, absent extenuating circumstances. If an employee is the complainant or respondent, the Title IX coordinator shall notify human resources director and/or President of the Board of Directors.
- 2) When contact is made, the Title IX coordinator is to review the following with the complainant and guardians(if necessary) to include:
  - a) options for supportive measures available with or without the filing of a formal complaint and consider the wishes of the complainant with respect to supportive measures
  - b) explain the process for filing a formal complaint with the Title IX coordinator and the response required of the school when a complaint is filed, including all the following:
    - i. that a formal complaint will initiate the grievance process
    - ii. that a formal complaint may be filed with the Title IX coordinator in person, by mail, or by electronic mail;
    - iii. the major steps in the grievance process, including
      - (1) a notice of the allegations that will be provided to the respondent that includes identification of the complainant and the allegations made;
      - (2) an investigation of the allegations of sexual harassment in which both parties will have opportunity to have an advisor, present witnesses, review evidence, pose written questions of the other party, and receive a copy of the investigative report;
      - (3) a decision on responsibility in which a decision-maker objectively evaluates all relevant evidence and determines whether the respondent engaged in the alleged sexual harassment in violation of this policy; and
      - (4) the opportunity for either party to appeal the decision;
    - iv. the approximate time frame for concluding the grievance process;
    - v. that school officials will treat both parties equitably by
      - (1) providing remedies to the complainant if the respondent is found responsible, and

- (2) by not imposing disciplinary sanctions on the respondent without first following the grievance process
- vi. the circumstances under which a formal complaint might be consolidated with other formal complaints or dismissed; and
- vii. that the Title IX coordinator may have an obligation to initiate the grievance process in the absence of a formal complaint filed by the complainant and the time frame in which that decision will be made

### **Supportive Measures:**

#### Title IX Coordinator Arranges Implementation of Supportive Measures

After considering the complainant's wishes, the Title IX coordinator shall arrange the effective implementation of appropriate supportive measures unless, in the exercise of good judgment, the Title IX coordinator determines that supportive measures should not be provided. If supportive measures are not provided to the complainant, the Title IX coordinator shall document why supportive measures were not provided and why not providing supportive measures is not deliberately indifferent to known sexual harassment.

If the complainant is a student with a disability, the Title IX coordinator may need to consult with appropriate school personnel to determine whether adjustments to the student's IEP or Section 504 plan are needed to implement any supportive measures to be provided and/or whether the student's plan requires adjustment to the proposed supportive measures.

#### **Examples/Requirements:**

- Free, individualized services designed to restore or preserve equal access to education, protect safety, or deter sexual harassment.
- Must remain confidential for either the complainant and/or respondent to access and receive supportive measures as long as it does not impair the school's ability to provide a supportive measure.
- Support a student. They are not punitive or disciplinary with respect to another student.
- Supportive Measures don't unreasonably burden any other person.
  - Examples of Supportive Measures
    - Counseling
    - Extension of deadlines
    - Modification of work or class schedule
    - Campus escort services
    - Increased security or monitoring of parts of campus
    - Mutual restrictions on contact between individuals in question

Title IX Coordinator is responsible for the supportive measure options provided and the effective implementation of the supportive measures.

### **Formal Complaints**

A formal complaint is the official document alleging sexual harassment. The school must investigate the allegations claimed in a formal complaint. It is filed by the student (or legal guardian) or in some cases by the Title IX Coordinator. A formal complaint can be filed to the Title IX Coordinator in person, email, phone or mail and any other method the recipient allows.

In cases where an alleged victim does not file a formal complaint, the Title IX Coordinator might initiate grievance procedures where discipline is appropriate.

***Title IX Coordinator Determines Whether to Sign a Formal Complaint***

If the complainant declined to file a formal complaint, the Title IX coordinator shall determine on a case-by-case basis whether to sign, i.e., file, a formal complaint to initiate the grievance process.

The Title IX coordinator should file a formal complaint

(1) if the respondent is a school employee and the complainant is a student

(2) in other cases where, in the exercise of good judgment and in consultation with the school attorney as appropriate, the coordinator determines that a grievance process is necessary to comply with the obligation not to be deliberately indifferent to known allegations of sexual harassment.

Factors that may be considered when deciding whether to file a formal complaint include but are not limited to:

- whether there is a pattern of conduct by a perpetrator;
- whether violence or weapons are involved;
- the seriousness of the alleged harassment;
- the age of the student harassed;
- whether there have been other complaints or reports of harassment against the alleged harasser;
- whether any available supportive measures are adequate to restore or preserve the complainant's or respondent's equal access to the school system's education program and activities
- whether an investigation and potential disciplinary action against a respondent is required in order to preserve every individuals' equal access to the school system's education program and activities or to comply with law.

Credibility or merit of the complaint will not be prejudged when determining whether to file a formal complaint. A decision by the Title IX coordinator to sign a formal complaint is not to be construed as supportive of the complainant or in opposition to the respondent or as an indication of whether the allegations are credible or have merit, or whether there is evidence sufficient to determine responsibility. Signing a formal complaint does not make the Title IX coordinator a complainant or party to the complaint nor relieve the Title IX coordinator from any responsibilities under this policy. The Title IX coordinator shall document the decision of whether to sign a complaint and the reasons for that decision.

**Emergency Removals**

- 1) A school can remove a respondent from the school's education programs or activities on an emergency basis if the respondent poses an immediate threat to anyone's physical health or safety.
- 2) If the respondent is a school employee, the administration has the option to place that employee on administrative leave during the investigation.

### **Written Notice to the Parties**

When the school begins an investigation, it has to provide the parties with written notice of certain information. It has to include: notice of the school's grievance process and whether there is an opportunity to engage in informal resolutions.

Details of Written Notice:

- 1) The actual allegations and facts that would constitute sexual harassment. Key details of the alleged sexual harassment to include who was involved, the date and location of incident if known, and the alleged misconduct that constitutes sexual harassment.
- 2) The presumption of innocence. Written notice must include a statement that the respondent is presumed not responsible at the outset of the process and can only be held responsible after the grievance process concludes.
- 3) A statement that the parties are entitled to the adviser of their choice. The adviser can be an attorney but does not have to be.
- 4) A statement that the parties can request to inspect and review certain evidence.
- 5) Information regarding the code of conduct and false statements.

A satisfactory notice has to be provided to the parties before any initial interview with a respondent occurs, and has to give the parties sufficient time for a respondent to prepare before an initial interview.

IMS will investigate every formal complaint and send the initial written notice as soon as a formal complaint is received.

### **Mandatory Dismissals**

IMS will dismiss a complaint:

1. that does not describe conduct that meets the definition of sexual harassment
2. that alleges sexual harassment that did not occur in the school's education program or activity
3. that alleges sexual harassment that did not occur in the United States at all

IMS can still address these complaints under their code of conduct, even if the misconduct is not sexual harassment under Title IX.

### **Discretionary Dismissals**

A complaint will be dismissed if:

- 1) if the complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or some of its allegations
- 2) if the respondent is no longer enrolled or employed by the school
- 3) if specific circumstances prevent the school from gathering evidence sufficient to reach a determination about the allegations.

Whenever a formal complaint is dismissed, or any allegations in it, the school has to send written notice of the dismissal and the reasons to the parties. Both parties have the right to appeal the school's dismissal decision.

### **Evidence Process**

IMS must give both parties specific, equal rights and protections. These rights and protections apply whether the complainant filed the formal complaint, or whether the Title IX Coordinator began the investigation by signing the formal complaint. IMS must obtain written consent prior to gaining access to a party's personal records if they are maintained by a physician, psychiatrist, psychologist, or other professional for the purpose of treatment of the party.

IMS must provide an equal opportunity for the parties to have witnesses and evidence, including expert witnesses, as well as inculpatory or exculpatory evidence. The school can't restrict the ability of either party to discuss the allegations under investigation, or to gather and present relevant evidence. The school has to provide the same opportunities to the parties to have others present during the grievance proceedings, including access to an adviser of choice for any meetings or hearings.

IMS has to provide written notice of the date, time, location, participants, and purpose of all hearings, interviews, or other meetings, with sufficient time for the party to prepare for both the complainants and respondents. The school must also provide equal opportunities for the parties and their advisors to inspect and review the evidence obtained by the school as part of its investigation, if the information is directly related to the allegations raised in the formal complaint. That could include documents, notes from interviews with students or employees, or other types of evidence that the school gathers. It also includes evidence that the school doesn't think it will use or plan to use before reaching a determination. The evidence can be sent in electronic format or hard copy. That evidence must later be available at any hearing, if a hearing occurs. After gathering evidence, the school needs. The school also has to give the parties a meaningful opportunity to respond to the evidence after the school has provided it.

### **Investigative Reports**

The report must summarize the evidence that the school has gathered about the alleged incident.

After gathering evidence, the school needs to prepare an investigative report on the allegations of the formal complaint. A school has to give the parties at least ten days to respond to the evidence in writing. If a response is submitted, the school must consider that response before finalizing the investigative report. The investigative report can then be finalized and provided to the parties. That report must be circulated to the parties at least another 10 days before any determination of responsibility, or 10 days before a hearing, if a hearing needs to occur.

### **Hearings**

IMS has the option to choose whether a hearing is necessary or needed. Even without a hearing, the school must give the parties equal opportunity to submit relevant, written questions to each other, before the decision-maker reaches a determination. If the decision maker opts not



to ask a question, it has to explain to the parties why the question isn't relevant to the issues in the hearing. .

IMS has to create an audio or audiovisual recording, or a transcript, of any live hearing, and make it available to the parties for inspection and review. IMS must **always** comply with disability law, so that individuals with disabilities who participate in a school's grievance process are appropriately accommodated, including with respect to the use of technology and the reliance on visual, auditory, or written modes of communication.

### **Decision-making**

Whether or not a hearing was held, the school's decision-maker needs to objectively evaluate the relevant evidence and reach conclusions about whether the respondent is responsible for the alleged sexual harassment.

A school's decision maker needs to use independent judgment, so the decision-maker cannot be the same person who conducted the investigation or gathered the evidence during the investigation and cannot be the school's Title IX Coordinator.

Decision makers must be free from conflicts of interest or bias for or against complainants or respondents, and must receive special training about how to be impartial and how to decide what evidence is relevant.

The decision-maker will weigh the relevant evidence and decide whether it meets the school's standard of evidence for sexual harassment.

### **Determination Written Notice**

After the evidence has been weighed, the determination has to be written. It must include:

1. The portion of the school's policies that was violated.
2. A description of the procedural steps that were taken by the school to come to the decision. This includes describing all of the notices and interviews that took place, any site visits that occurred, and the hearing itself.
3. A finding of fact section where the decision-maker explains what facts were introduced at the hearing.
4. A section that draws conclusions after applying the facts to the portion of the school's policy that applies. For each allegation that was made in the formal complaint, the written determination has to provide a statement and rationale for the conclusion as to each allegation in the formal complaint.
5. A statement and rationale for the ultimate determination of responsibility.
6. Describe any disciplinary sanctions that the school will impose on the respondent, and state whether the school will provide remedies to the complainant. Where the respondent is determined responsible for sexually harassing the complainant.
7. A statement and rationale for any remedies for the complainant, addressing how those remedies will restore and preserve equal access. These remedies might be some of the same individualized services that schools must offer as supportive measures, but because the respondent has now been found responsible for sexual harassment, remedies may burden the respondent. The Title IX Coordinator is responsible for effectively implementing remedies for the complainant.

8. A statement of the recipient's procedures, a statement that the parties have a right to appeal the initial determination regarding responsibility, and the permissible basis for appeal.

The school must send the written determination to the parties simultaneously, along with information about how to appeal the determination.

The decision is final either

1. If the parties do not appeal
2. At the conclusion of the appeal if either party files an appeal

A school has discretion to set deadlines for when an appeal must be filed, bearing in mind the obligations to conclude the entire grievance process and bring resolution to the situation for both parties, within a reasonable time frame. The Title IX Coordinator is responsible for carrying out the remedies contained within the written decision.

### **Appeals**

A school has to offer both parties an opportunity to appeal.

Appeals can be taken from two different steps in the process:

- After a dismissal before the grievance process, whether mandatory or discretionary.
- The ultimate finding of responsibility at the end of the grievance process

Either a complainant or the respondent can appeal on the grounds that:

- 1) a procedural irregularity affected the outcome of the matter.
- 2) New evidence has been discovered that was not reasonably available at the time of the determination on responsibility or dismissal.
- 3) A conflict of interest on the part of the Title IX Coordinator, an investigator who compiled evidence, or a decision-maker, and the conflict of interest affected the outcome.
- 4) Schools can offer additional grounds for appeals, if they want to, so long as the grounds apply on an equal basis to both parties.

### **Process of Appeal**

1. The recipient has to notify both parties in writing and implement appeal procedures equally.
2. Both parties must have equal opportunity to submit a written statement supporting or challenging the outcome.
3. The person who decides the appeal cannot be the same person who reached the determination regarding responsibility, or the same person as the investigator or Title IX Coordinator.
4. After considering the parties' written statements, the decision-maker on appeal has to issue a written decision and send it to the parties simultaneously.

The school's determination about whether the respondent is responsible for the sexual harassment allegations becomes final after the appeal.

### **Informal Resolution**

Schools can offer a voluntary, informal resolution of the formal complaint.

**\*\*EXCEPT** when the respondent is an employee of the school.

Informal resolution may only be attempted if each party enters the process completely voluntarily.

A school can never force, threaten, or require any party, complainant or respondent, into going into formal resolution.

Schools can not force students to agree to informal resolution ahead of time, as a condition for going to school. Schools can not force employees to agree to informal resolution as a condition of employment.

If informal resolution proceeds, the school must provide a facilitator who is free from conflicts of interest or bias, and who has received special training.

The school still needs to provide complainants and respondents with notice of the allegations, notice of their rights, information about whether an informal process is confidential, and about withdrawing from the process to return to the grievance process before an agreement has been reached.

### **Record Keeping**

This extends for 7 years and must include:

- 1) Records of the schools investigation including any determination of responsibility - this includes audio or transcripts of any hearings.
- 2) Record of any discipline against the respondent or remedies provided to the complainant
- 3) Records of any appeal and the materials associated with the appeal - including written statements provided by both parties.
- 4) Records of any informal resolution process such as notices that go out to the parties.
- 5) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution. These materials also have to be posted on the recipients' website, or made available for public inspection if the recipient doesn't have a website.
- 6) Records of the supportive measures that they took in response to a report or complaint of sexual harassment. This includes situations when a recipient offers supportive measures to a complainant only, and where the alleged victim of sexual harassment opts not to proceed with formal complaint. Even in these cases, the school's record keeping has to include the basis for its belief that it was not deliberately indifferent, and that it took measures designed to restore and preserve equal access to its education program or activity.

These recordkeeping requirements help hold schools accountable for meeting their Title IX obligations. If the department needs to investigate whether the school responded appropriately to a sexual harassment situation, the school will have documentation describing its response. Requiring these types of records also reminds a school to carefully consider every response to sexual harassment, making it more likely that every complainant and every respondent will receive the rights and benefits provided in this law.

### **Retaliation**

No school or person is allowed to retaliate against anyone for exercising rights under Title IX.

IF any person believes they have been intimidated, threatened, or coerced, or discriminated against in an effort to stop the exercise of Title IX rights, the person should file a complaint with the school. Any person retaliated against can file a complaint with the school and the school must have procedures in place for the prompt and equitable resolution of such complaints.

References:

[Title IX policy](#)

[Summary of Changes](#)