

# Regulation 0403-80

## Title IX Grievance Process

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## Title IX Grievance Process

### Scope of Procedure

This Title IX Grievance Procedure applies to all members of West Ada School District's community, including students, personnel, and Board members as well as District patrons, guests, visitors, volunteers, and invitees.

### Guiding Principles

The District is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, which are free from sex and gender-based harassment, discrimination, and retaliation. The District prohibits harassment and discrimination on the basis of sex, sexual orientation, gender, gender identity, and pregnancy, as well as retaliation against individuals who report allegations of sex and gender-based harassment and discrimination, file a Formal Complaint, or participate in a grievance procedure.

The District's Website shall identify the District's current Title IX Coordinator.

Students, personnel, or other members of the District community who believe that they have been subjected to sex or gender-based harassment, discrimination, or retaliation should report the incident to the District's Title IX Coordinator, who will provide information about Supportive Measures and the applicable grievance procedure. Violations of this District procedure or its related policy may result in discipline to either students or personnel or other consequences to those subject to this procedure and related policies.

When an appropriate official at the District has "Actual Knowledge" of "Sexual Harassment," discrimination, and/or retaliation of a student or personnel that occurs in one of its educational programs or activities, the District must respond promptly and in

a manner that is not deliberately indifferent. This standard does not require a perfect response; rather, it requires a response that is not clearly unreasonable considering the known circumstances over which the District exercises control.

## Title IX – Nondiscrimination Policy Grievance Procedure

### Definitions

The following definitions apply to the identified terms used in this procedure:

- “Actual Knowledge” means notice of Sexual Harassment or allegations of Sexual Harassment to:
  - The District’s Coordinator; or
  - Any District official possessing the authority to institute corrective measures on behalf of the District; or
  - Any personnel of the District.

Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute Actual Knowledge. This standard is not met when the only official of the District with Actual Knowledge is the Respondent (as defined below). The mere ability or obligation to report Sexual Harassment or to inform a student about how to report Sexual Harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the District.

- “Notice” as used in this paragraph includes, but is not limited to, a report of Sexual Harassment to the Coordinator as set forth in this procedure.
- “Complainant” means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment, discrimination and/or retaliation.
- “Consent” Under circumstances where a Sexual Assault/any sexual activity is alleged by a student against an adult, non-student employee, the District does not recognize the defense of “Consent,” however it is defined:

Where the parties are both adults the following definition of “Consent” will apply: Consent occurs where there is a knowing, voluntary, and clear grant of permission, by word or action, to engage in sexual activity. As individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity. If Consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged. Consent may be withdrawn. A person cannot Consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs.

It is a violation of policy if a Respondent engages in sexual activity with someone who is incapable of giving Consent, or is otherwise incapacitated.

- “Incapacitation” occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing, informed Consent. For example, they cannot understand the “who, what, when, where, why, or how” of their sexual interaction, or they are under the influence or lack the mental capability to make such decision.
- “Formal Complaint” means a document filed by a Complainant, or signed and submitted by the Coordinator, alleging Sexual Harassment, discrimination and/or retaliation against a Respondent, and requesting that the District investigate the allegation. At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in the educational programs or activities of the District. A Formal Complaint may be filed with the Coordinator in person, by mail, or by electronic mail, or by using the contact information listed on the District’s website. If the District’s Title IX Coordinator is the subject of a Formal Complaint, the Formal Complaint will be submitted to the Superintendent who will designate an alternative Title IX Coordinator. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission, (such as by electronic mail or through an online portal provided for this purpose by the District,) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Coordinator signs and submits a Formal Complaint, the Coordinator is not a Complainant or otherwise a party to this grievance procedure and must otherwise comply with the requirements of this Procedure.
- “Informal Complaint” means a voluntary process by which the Complainant chooses not to submit a Formal Complaint but chooses to informally resolve the issue between the two parties at the earliest stage possible. As a general rule, an informal complaint process:
  - Will not receive a comprehensive investigation,
  - Can be kept fully confidential; and
  - Will not be referred for official disciplinary action if an agreement between the parties and the school is reached.
- “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.
- “Sexual Harassment” means conduct on the basis of sex that satisfies one or more of the following:
  - “Quid pro quo” Harassment, which occurs when a District employee conditions the provision of a District benefit, service, or assistance on an individual’s participation in unwelcome sexual conduct;
  - “Hostile Environment,” which is defined as unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to District education program or activity; or

- Physical threats and attacks, including “Sexual Assault,” defined as forcible and non-forcible sex offenses as defined in the Clery Act:

**Forcible Act:** Any sexual act directed against another person, forcibly and/or against that person’s will; or not forcible or against that person’s will when the victim is incapable of giving consent (forcible rape, forcible sodomy, sexual assault with an object and forcible fondling).

**Non-Forcible Act:** Unlawful, non-forcible sexual intercourse (i.e. incest, statutory rape).

**or** dating violence, domestic violence, or stalking as defined in the Violence Against Women Act:

**Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such relationship shall be determined based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship. For the purpose of this definition, Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.

**Domestic Violence:** A felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
- By any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

**Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others; or suffer substantial emotional distress.

- “Supportive Measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent in cases where either no Formal Complaint has been filed, or both before and/or after the filing of a Formal Complaint. Such measures are designed to restore or preserve equal access to the District’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District’s educational environment, or deter Sexual Harassment.

Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, school safety escorts, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security, and monitoring of certain areas of the campus, and other similar measures.

The District shall maintain as confidential any Supportive Measures provided to the Complainant or Respondent, provided that maintaining such confidentiality will not impair the ability of the District to provide the Supportive Measures. The Coordinator is responsible for coordinating the effective implementation of all Supportive Measures.

## Grievance Procedure

### **1. Receipt of a Complaint, Report, or Information Alleging Sexual Harassment**

Upon receipt of a Complaint or report (whether verbal or written) of possible Sexual Harassment, the District shall first determine whether to initiate a formal or informal response. Thus, all Complaints, reports, or information received by any District employee that Sexual Harassment is occurring or has occurred shall be immediately forwarded to the District's Title IX Coordinator or other designated employee for review and action as appropriate.

*Law Enforcement Reporting:* A determination needs to be made as to whether the reported event mandates reporting to law enforcement and/or the Idaho Department of Health and Welfare in accordance with Idaho Code and, where appropriate, a report made and documented. If uncertain as to reporting status, the individual who received the report may consult with the Title IX Coordinator. However, reporting must occur within twenty-four (24) hours of receipt of a mandatory reporting event.

If the reporting party is a third party the Title IX Coordinator shall acknowledge receipt of the report to the third party and commence the process of contacting the Complainant.

The Title IX Coordinator (Coordinator) shall promptly contact the Complainant and discuss with them the availability of Supportive Measures, with or without the filing of a Formal Complaint, the process for filing a written Formal Complaint, providing assistance to the Complainant if requested, as well as information about the grievance process in general.

*Minor Student – Parental Reporting* – The Complainant's parent/guardian will be contacted if the Complainant is a minor student.

The Coordinator shall obtain enough information to sufficiently understand the allegations and determine jurisdiction. This discussion should also include:

1. Parental involvement parameters if Complainant is minor student.
2. Provide with written Notice of Rights and Options, including the right to an advisor, providing the Complainant with a copy of the District's Title IX Policy and Procedures.

3. Answering any questions and discussing concerns the Complainant might have regarding the process and policies.

The Coordinator shall commence the use of a Communication/Activity Log to detail all activity associated with the Complaint.

*Emergency Removal (of students):* Nothing in this procedure prevents the District from removing a Respondent from a District education program or activity on an emergency basis, provided that an individualized safety and risk analysis is performed by the Coordinator and Superintendent who determine that an immediate threat to the physical health or safety of any student or other individual arise from the allegations of Sexual Harassment that justify removal. The Coordinator and Superintendent shall provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights and requirements under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

*Administrative Leave (of employees):* Nothing in this procedure precludes the District from placing a non-student employee Respondent on administrative leave during the pendency of a grievance investigation under this procedure. Notwithstanding the above, prior to placing an employee respondent on administrative leave, the Coordinator or designee shall ensure any rights provided by Section 504 of the Rehabilitation Act of 1973 and/or the Americans with Disabilities Act are not impaired or violated. Placement of a non-student employee on a period of administrative leave shall be consistent with the applicable provisions of the Idaho Code and any applicable District policy.

If a Formal Complaint is filed against a Board member, District patron, guest, visitor, volunteer or invitee, the District maintains the right to exclude the Respondent from any and all school activities and functions during the pendency of the grievance investigation under this procedure.

### **1. Providing Supportive Measures**

If an Informal Complaint is filed, (for instance, because the Complainant does not wish to file a written Formal Complaint,) as well as during the pendency of the investigation and the decision concluding a Formal Complaint, Supportive Measures may be implemented to restore or preserve the Complainant's access to the District's educational programs so long as such Supportive Measures are not punitive to the Respondent and are not unreasonably burdening to the Respondent.

Supportive Measures may include actions taken to protect the safety of all parties or the District's educational environment, or which otherwise deter Sexual Harassment from occurring in the future.

### **1. Filing a Written Formal Complaint**

Upon receipt of a written Formal Complaint, an investigation will commence unless the allegations of the Complaint fall outside the jurisdiction of the District and/or meet the grounds for dismissal or Informal Resolution (as detailed below).

The Coordinator or designee is required to provide written Notice (as defined below) to all known Complainants and Respondents of the allegations and the resulting investigation.

- General Notice Requirements: The Notice will include the District's Title IX grievance process as well as information regarding the District's Informal Resolution Process.
- Specific Notice Requirements: The written Notice shall include the following information
  - Information describing the alleged conduct potentially constituting Sexual Harassment, including sufficient details known at the time the Notice is prepared to allow the parties to prepare a response prior to the Investigator's initial interview, and shall be delivered to the parties in enough time to allow their preparation for the initial interview.
  - Sufficient details include but are not limited to the identities of the parties involved, the conduct allegedly constituting Sexual Harassment, the date(s), and location(s) of the incident(s).
  - A statement that the Respondent is presumed to not be responsible for the alleged conduct, and that a determination of responsibility will not be made until the conclusion of the grievance process.
  - A statement informing the parties that they are entitled to have an advisor or representative of their choosing who may be, though is not required to be, an attorney, and that the advisor is authorized to review all evidence submitted in the matter.
  - The Notice must inform the parties that District policy and procedure prohibit knowingly making false statements or knowingly submitting false information to the investigator or at any other time during the grievance process.
  - The Notice must warn the parties that retaliation is prohibited. Accordingly, the parties must be informed that no District employee or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this procedure, or because the individual has made a report or Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this procedure. Retaliation includes circumstances where intimidation, threats, coercion, or discrimination are made for the purpose of interfering with any right or privilege secured by Title IX or this procedure. This includes threatening charges against an individual for Code of Ethics or 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. The District shall keep confidential the identity of:

- Any individual who has made a report or Complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment;
- Any Complainant;
- Any individual who has been reported to be the perpetrator of sex discrimination;
- Any Respondent; and
- Any witness

except:

- As may be permitted by FERPA ( 20 U.S.C. § 1232g) or a FERPA regulation (34 CFR Part 99);
- As required by law; or
- To carry out the purposes of this procedure, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Complaints alleging retaliation may be filed as an additional charge or counter-charge under these procedures.

- **Additional Charges:** If, during the investigation, it is determined based on the information gathered that additional allegations or charges are warranted, an Amended Notice shall be prepared and submitted to the parties including the new/additional allegations and charges as appropriate.
- **Consolidation:** The Coordinator may consolidate two or more Formal Complaints into a single action provided that the allegations arise out of a common set of facts or circumstances and if in the course of an investigation, it is determined that:
  - There is more than one Respondent and/or more than one Complainant; or
  - There are cross-Complaints, or additional Complaints raised by the original Complainant against the original Respondent (such as retaliation), or by the Respondent against any other party.

In the situation of a consolidation, there is no “lead Complainant”, each party independently receives Notices and evidence for review. In the context of a grievance process that involves multiple Complainants, multiple Respondents, or both, the District may issue a single Investigative Report. All parties to a consolidated Complaint will also receive the same written determination (The parties must receive the same written determination of responsibility, although the determination of responsibility may be different with respect to each allegation depending upon the facts. The written determination must be provided simultaneously to the parties and may not be redacted.



In the event of cross-Complaints, each party is entitled to the rights attached to their respective status. In other words, a Respondent filing a cross-Complaint against the Complainant would be entitled to request Supportive Measures typically reserved for the Complainant. Likewise, evidentiary exclusions such a “rape shield” provision would apply to the Respondent in their status as a Complainant.

## **1. Conduct of the Investigation**

Once it is determined that an investigation is to occur, the Coordinator shall assign an investigator. The Coordinator and Investigator can confer in preparation of the investigation as to the strategy and process of the investigation.

*Investigation:* Investigation shall include, but not be limited to, interviews of the Complainant, Respondent as well as any witnesses; the collection and review of any evidence submitted by either party or independently discovered including such matters as video recordings, text messages, photographs, e-mails, social media; and review of District policies and procedures, etc.

- **Burden of Investigation:** The burden of gathering evidence sufficient to make a determination of responsibility is the charge of the District’s Investigator(s) and not the parties.
  - However, the District’s Investigator is not authorized to access a party’s records that are made or maintained by a health care provider if the record was made in the course of providing treatment to the party, unless written consent from an authorized person is provided to obtain such privileged records for purposes of investigating and resolving the allegations of the Formal Complaint.
  - **Evidence Offered by Parties:** The parties shall be provided an equal opportunity to identify witnesses, including fact and expert witnesses, as well as other inculpatory and exculpatory evidence.
  - **No Restrictions:** The ability of the parties to discuss the allegations under investigation or to gather and present evidence shall not be restricted.
  - **Equal Representation Rights:** All parties shall have the same opportunity to have others present, or to be represented by the advisor of their choice throughout the grievance process, including attendance at related meetings or proceedings. If the District limits access to representation in any way at any time during the proceedings, such limitation shall be equally applied to all parties in the same manner.
    - Access to representation may be limited only where a party is already represented as authorized by this procedure, and the additional representation will unduly increase the cost to the parties, and/or will not otherwise serve to significantly promote a legitimate purpose under this procedure.

- Notice of Interviews: Adequate notice of the purpose, date, time, place, and the identities of all participants involved shall be provided to any party whose participation at an interview or meeting is invited or expected, and allowing sufficient time for the party to prepare and fairly participate.
- Evidentiary Considerations: The investigation shall not consider:
  - Incidents not directly related to the possible violation, unless they evidence a pattern;
  - The character of the parties; or
  - Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.
- Right to Inspect Evidence: All parties shall be provided equal access to inspect and review any or all evidence gathered during the investigation related to the allegations of the Formal Complaint, whether or not relied upon or referred to in the Investigative Report. This will ensure that the parties can respond to the evidence prior to the conclusion of the investigation.
- Prior to completion of the Investigative Report, the Investigator shall provide the parties and their respective advisors, if any, a secure electronic or hard copy of the evidence subject to inspection. The parties must have at least **ten (10) calendar** days to submit a written response which the Investigator shall consider prior to completion of the Investigative Report.
- Investigative Report: At least ten (10) **calendar** days prior to any determination regarding responsibility, the Title IX Coordinator shall send to all parties and their advisors, if any, by electronic format or hard copy, a copy of the investigative report for the parties' review and written response. The parties' responses shall be made part of the record.
- Subsequent to the above-stated time frames, with inclusion of responses for the record, the Coordinator shall notify the parties that the Investigative Report and evidentiary materials will be forwarded to the Decision-Maker to make a responsibility determination.

## 1. Informal Resolution Process

The Informal Resolution Process may include mediation, or other meeting of the parties that does not involve a full investigation and adjudication of the Formal Complaint.

The District may **not** require the parties to participate in an Informal Resolution Process. Informal Resolution is available **only** if a written Formal Complaint was submitted to the Coordinator. If these conditions are satisfied, then at any time during an investigation, but prior to the time of the Decision-Maker's final determination of

responsibility, the parties may request the Coordinator to initiate the Informal Resolution Process. In so doing, the Coordinator is required to comply with the following:

- Provide the parties with written notice informing them of the allegations at issue and the requirements of the resolution process. These requirements include the fact that a written agreement signed by the parties that resolves the allegations at issue will preclude the parties from resuming the Formal Complaint process that arose from the same allegations. The parties will also be informed that at any time prior to reaching a resolution, any party has the right to withdraw from the Informal Resolution Process and resume the grievance process with respect to the Formal Complaint, and will be notified that the records submitted or discussed during the Informal Resolution Process will be maintained by the District as part of the record, and may be used by the Decision-Maker to determine responsibility.
- Require the parties submit voluntary, written consent to participate in the Informal Resolution Process.
- Ensure that the Informal Resolution Process is **not** made available to resolve allegations that an employee Sexually Harassed a student.
- An Informal Resolution, signed and agreed to by the parties thereto, is not appealable.

#### **1. Dismissal of a Formal Complaint:**

A written Formal Complaint may be dismissed by the Coordinator under any of the following circumstances, and prior to a finding of responsibility:

- If the Complainant notifies the Coordinator in writing that he or she would like to withdraw the Formal Complaint or any allegations contained therein.
- If the Respondent is no longer enrolled or employed by the District.
- If specific circumstances exist which prevent the Investigator from gathering evidence sufficient to reach a determination regarding the merits of the Formal Complaint or allegations therein.

After investigating the allegations of the written Formal Complaint, dismissal is required if:

- The Coordinator or designee determines that the conduct alleged in the Complaint, even if proven, would not constitute Sexual Harassment as defined herein; or
- The alleged conduct did not occur in a District education program or activity; or
- The alleged conduct did not occur against a person in the United States.

Dismissal of the Title IX Formal Complaint, however, does not preclude action under another provision of the District's Policy.

Upon dismissing a Formal Complaint, the Coordinator shall simultaneously inform the parties in writing that the Formal Complaint has been dismissed and shall identify the reason(s) for the dismissal. This decision may be appealed in accordance with the Appeals portion of this procedure, below.

#### **1. Decision-Maker's Participation/ Determination Process**

If the matter is not dismissed for one of the reasons set forth above and is not resolved by the parties through the Informal Resolution Process then, following completion of the investigation, including issuance of the Investigator's Final Investigative Report, the matter shall be submitted to the Decision-Maker(s) for review and issuance of a determination of responsibility.

The Decision-Maker(s) cannot make a determination regarding responsibility until ten **(10) calendar** days after the date the Final Investigative Report is transmitted to the parties and the Decision-Maker(s), unless all parties and the Decision-Maker(s) agree to an expedited timeline.

The Coordinator shall designate the Decision-Maker(s) and inform the parties and their advisors of the designation of the Decision-Maker(s).

The Decision-Maker(s) may not have had any previous involvement with the investigation. Those who have served as Investigators in the investigation cannot serve as Decision-Maker(s). Those who are serving as advisors for any party cannot serve as Decision-Maker(s) in that matter. The Coordinator is also prohibited from serving as a Decision-Maker in the matter.

All objections to any Decision-Maker must be raised in writing. Any written objection must detail the rationale for the objection and must be submitted to the Coordinator no later than **three (3) calendar** days after being notified of the Decision-Maker's identity. Decision-Makers shall not be removed unless the Coordinator concludes that the Decision-Maker's bias or conflict of interest precludes a fair and impartial consideration of the evidence.

The Coordinator shall give the Decision-Maker(s) a list of the names of all parties, witnesses, and advisors. Upon review thereof, if any Decision-Maker believes they cannot make an objective determination, they must recuse themselves from the proceedings. If a Decision-Maker is unsure whether a bias or conflict of interest exists, they shall immediately disclose their concern(s) to the Coordinator and simultaneously inform the parties and their advisors.

No less than **ten (10) calendar** days prior to the decision-making phase of the process, the Coordinator or the Decision-Maker(s) shall send notice to all parties. Once mailed, emailed, or received in-person, Notice will be presumptively delivered.

The Notice shall contain the following:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions that could result.
- The name and contact information of the Decision-Maker(s), along with an invitation to object to any Decision-Maker(s) on the basis of demonstrated bias.
- A copy of all the materials provided to the Decision-Maker(s) about the matter.
- An invitation for the parties to review and submit a written response to the final Investigative Report within **five (5) calendar** days of the date of the notice.

- An invitation to each party to submit to the Decision-Maker(s) any written, relevant questions they want the Decision-Maker(s) to ask of any other party or witness within **five (5) calendar** days of the date of the notice.
- An invitation to contact the Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed during the course of the decision-making process, at least **five (5) calendar** days prior to the meeting/final determination.
- Should the Decision-Maker(s) opt to include meetings with the parties, the notice shall also contain the following:
  - The time, date, and location of any meeting
  - Any technology that will be used to facilitate the meeting
  - Information on whether the meeting will be recorded and, if so, information on access to the recording for the parties after the meeting
  - A statement that if any party does not appear at the scheduled meeting, the meeting will only be rescheduled for compelling reasons
  - Notification that the parties may have the assistance of an advisor of their choosing at the meeting
  - Whether parties can or cannot bring mobile phones or devices into the meeting.

Meetings for possible violations that occur near or after the end of a school year, assuming the Respondent is still subject to Policy No. 403.8 and West Ada School District's Title IX - Nondiscrimination Grievance Procedures and are unable to be resolved prior to the end of the school year will typically be held as soon as possible given the availability of the parties, but no later than immediately upon the start of the following school year. The District will implement appropriate Supportive Measures intended to correct and remediate any hostile environment while the resolution is delayed.

If there are going to be any delays in the process, the Decision-Maker(s) must provide notice of such to the parties.

- **Evidentiary Consideration by the Decision-Maker:** Only relevant, credible evidence will be considered by the Decision-Maker. Any evidence that the Decision-Maker(s) determine(s) is relevant and credible may be considered. The Decision-Maker will not consider:
  - Incidents not directly related to the possible violation, unless they evidence a pattern;
  - The character of the parties; or
  - Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information may only be considered at the sanction stage of the process and cannot be shared with the Decision-Maker until that time.

- **Commencement of Exchange of Questions Procedure:**

The Coordinator will initiate the Exchange of Questions Procedure.

Prior to reaching a determination regarding responsibility, the Decision-Maker(s) shall provide each party with an opportunity to submit written, relevant questions that the party desires to ask of any party or witness and shall subsequently provide each party with the answers. The Decision-Maker will also allow for additional, limited follow-up questions from each party to the other, and provide both with complete copies of the answers.

Upon receipt of the proposed questions, the Decision-Maker will review the proposed questions and determine which questions will be permitted, disallowed, or rephrased. The Decision-Maker shall limit or disallow any questions that are irrelevant, repetitive (and thus irrelevant), or abusive.

The Decision-Maker shall have full authority to decide all issues related to questioning and determinations of relevance.

The Decision-Maker, after any necessary consultation with the parties, investigator(s), and/or Coordinator, shall provide the parties and witnesses with:

- The relevant written questions to be answered; and
- A deadline for the parties and witnesses to submit written responses to the questions and any appropriate follow-up questions or comments by the parties.

The exchange of questions and responses by the parties and witnesses shall be concluded within a **ten (10) calendar day period**.

## **1. Decision Making Process and Determination Requirements**

Following its review of the evidence submitted by the investigator, the Decision-Maker shall issue a written determination of responsibility. To reach this determination, the District's burden of proof - clear and convincing evidence — must be described, and the burden satisfied, before the respondent can be found responsible for Sexual Harassment in violation of Title IX.

The written determination of responsibility shall include the following information:

- Identification of the allegations potentially constituting Sexual Harassment in violation of Title IX.
- A description of the procedural steps taken from receipt of the written Formal Complaint through the determination, including notifications to the parties, interviews of the parties and witnesses, site visits, and methods used to obtain other evidence.

- Findings of fact supporting the determination.
- Conclusions regarding application of the District's code of conduct/Policies to the facts.
- A statement of and rationale for the determination as to each allegation, including any determination regarding responsibility, any disciplinary action to be imposed on the respondent, and identification of remedies and measures, if any, that will be provided to restore or preserve equal access to the District's educational programs and activities to be provided to the Complainant.
- Considerations for disciplinary action. Factors considered when determining discipline may include, but are not limited to:
  - The nature, severity of, and circumstances surrounding the violation(s);
  - The Respondent's disciplinary history;
  - Previous allegations or allegations involving similar conduct;
  - The need for discipline to bring an end to the Title IX Sexual Harassment;
  - The need for discipline to prevent the future recurrence of Title IX Sexual Harassment;
  - The need to remedy the effects of the Title IX Sexual Harassment;
  - The impact on the parties; and
  - Any other information deemed relevant by the decision-maker(s)
- The discipline imposed shall be implemented as soon as is feasible, either upon the outcome of any appeal or upon the expiration of the window to appeal if no appeal is requested. The sanctions described in this process are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by external authorities.
- Identification of the procedures for filing an appeal and the permissible grounds for Complainant or Respondent to base their appeal.

The Decision-Maker shall simultaneously provide their written determination to all parties. The determination becomes final either, where an appeal is filed, on the date the parties are provided copies of the written determination of the result of the appeal; or, if no appeal is filed, the date on which an appeal would no longer be considered timely.

The Coordinator is responsible for the effective implementation of all remedies set forth in the written determination of responsibility. In the event a student expulsion is recommended, pursuant to and in accordance with the requirements of Idaho Code § 33-205, the Coordinator shall ensure that an expulsion hearing is scheduled and heard by the Board of Trustees.

## 1. Appeals

Any party may file a request for appeal in writing with the Coordinator within **seven (7) calendar** days of the delivery of the notice of a final decision which can include notice of dismissal.

The request for appeal should identify the ground(s) on which the party is seeking to appeal the determination or dismissal. The request for appeal should thereafter be advanced from the Coordinator to the Appellate Decision-Maker.

A single Appellate Decision-Maker shall consider the appeal. The Appellate Decision-Maker shall have had no prior involvement in the process, including any dismissal appeal that may have been heard earlier in the process.

The request for appeal shall be forwarded to the Appellate Decision-Maker for consideration to determine whether the request meets the grounds for appeal. This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is filed in a timely manner.

Appeals shall be limited to the following grounds:

- 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;
- The Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

Appeal procedure: Upon receipt of a valid appeal, the Coordinator shall:

- Notify the other party in writing that an appeal has been filed and implement the appeal procedure fairly and equally for both parties.
- Ensure the Appellate Decision-Maker is not:
  - The same person as the Decision-Maker that issued the written determination of responsibility;
  - The person who issued the dismissal;
  - The investigator; or
  - The Coordinator.
- Ensure the Appellate Decision-Maker has been trained in accordance with the requirements of this grievance procedure.
- Neither party is required to submit a written statement to the Appellate Decision-Maker. However, the District shall provide to the appealing party a period of **ten (10) calendar** days following the delivery of the notice of the appeal to submit a written statement in support of the appeal and challenging the outcome. Thereafter, the District shall provide to the responding party a period of **ten (10) calendar** days following the delivery of the appealing party's statement in support of the appeal to submit the responding party's written statement in opposition to the appeal (and supporting the outcome that is the subject of the appeal). The responding party shall be provided this opportunity regardless of whether the appealing party submitted a written statement or not. These should be submitted directly to the Appellate Decision-Maker. In the event the parties and the



Appellate Decision-Maker agree to a different schedule (whether allowing more or less time), the time allowed to prepare a written statement shall be the same for all parties.

- The Appellate Decision-Maker shall gather and review relevant materials from the Title IX Coordinator and/or Decision Maker. Such materials may include: Investigation Report, written questions and answers submitted to the Decision-Maker, Determination of Responsibility or Notice of Dismissal as well as any other material deemed to be relevant depending on the basis for the appeal. The Appellate Decision-Maker may gather information beyond that contained in the investigation record, if necessary, to thoroughly review and consider the appeal.
- The Appellate Decision-Maker has no obligation or requirement to meet with the parties or other individuals when reviewing or considering an appeal. Likewise, the Appellate Decision-Maker is not charged with ‘re-investigating’ the matter.
- Issue a written decision describing the result of the appeal and identifying the basis and rationale for the decision.
- Within **thirty (30) school days**, the Appellate Decision-Maker shall provide the written decision simultaneously to all parties.
  - The Appellate Decision-Maker may affirm, reverse, or dismiss the underlying decision. The written determination shall describe the results of the appeal, the rationale for the results and notice that the decision by the Appellate Decision-Maker is final.
  - The appealing party has the burden of demonstrating why the determination of responsibility (or associated sanction) or dismissal decision should be overturned.

## Requirements of the Title IX Grievance Procedure

The following requirements apply to the conduct of the Title IX Grievance procedure set forth above.

- **Equitable treatment of the parties:** At all times, both Complainants and Respondents shall be equitably treated by providing remedies to a Complainant until a determination of responsibility for Sexual Harassment has been made against the Respondent. No sanction or discipline may be imposed against the Respondent unless and until the process required by this procedure has been completed. Until a final determination of responsibility has been issued only “Supportive Measures” may be initiated that are non-disciplinary or non-punitive and avoid burdening the Respondent. All final remedies, however, must 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;” however, following the decision, such remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.
- **Objective evaluation of the evidence:** The formal grievance process involves an objective evaluation of all relevant evidence obtained, including evidence that

supports the conclusion the Respondent engaged in a violation of policy or procedure and evidence that supports the conclusion the Respondent did not. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

- **Lack of bias:** Any individual materially involved in the administration of the formal grievance process including the Coordinator, Investigator(s), Decision-Maker(s) and Appellate Decision-Maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.
- **Title IX training of District participating staff:** Any individual designated by the District as a Coordinator, Investigator, Decision-Maker, Appellate Decision-Maker or any person designated by the District to facilitate an informal resolution process, cannot have a conflict of interest or bias for or against Complainants or Respondents generally, or against any individual Complainant or Respondent. The District shall ensure that Coordinators, Investigators, Decision-Makers, Appellate Decision-Makers, and any person who facilitates an informal resolution process, receives training on the definition of "Sexual Harassment" set forth in this procedure, the scope of the District's education program or activity, how to conduct an investigation and grievance process, 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. The District shall ensure that Decision-Maker(s) receive training 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, as required by this procedure. The District shall also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in this procedure. All materials used to train Coordinators, Investigators, Decision-Makers, Appellate Decision-Makers, and any persons facilitating an informal resolution process, shall not rely on stereotypes based on gender, and must promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment, and provide guidance therefor.
- **Presumption of innocence:** The District presumes that the Respondent is not responsible for the reported misconduct unless and until a final determination is made, in accordance with this procedure, that Policy 502.70, Policy 403.71, Policy 403.8 or any other applicable policy, handbook provision or Code of Ethics or conduct prohibiting sex discrimination and Sexual Harassment has been violated.
- **Promptness:** The District shall make a good faith effort to complete the investigation as promptly as possible and will communicate regularly with the parties to update them on the progress and timing of the investigation. Investigations are completed promptly, normally within **thirty [30] school** days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations; availability of witnesses; police involvement; and other factors.

Notwithstanding the above, The District may undertake a delay in its investigation, lasting from several days to a few weeks, if circumstances require. Such circumstances include but are not limited to , the need for language assistance, emergency school closures/events, the absence of parties and/or witnesses, and/or a need for accommodations for disabilities or health conditions.

The District shall communicate in writing the anticipated duration of the delay and the reason for it to the parties and provide the parties with status updates if necessary. The District will promptly resume its investigation and formal grievance process as soon as feasible. During such a delay, the District will implement Supportive Measures as deemed appropriate.

- **Description of sanctions.** The following describes the range of possible sanctions that may be implemented following a finding of responsibility.

Student Discipline: The following are the usual possible sanctions that may be imposed upon students singly or in combination:

- A warning;
- Required counseling;
- A required substance abuse treatment program;
- Exclusion from participating in extracurricular activities or other District programs/activities;
- Alternative placement;
- Suspension, which may be in-school, out-of-school, long-term, short-term, extended, or other suspension;
- Expulsion (in compliance with I.C. § 33-205); and
- Other actions: In addition to or in place of the above sanctions, the District may assign any other sanctions deemed appropriate.

Employee Sanctions: Sanctions for an employee may include:

- A verbal or written warning;
- A performance improvement plan or management process;
- Enhanced supervision, observation, or review;
- Required counseling;
- Required training or education;
- Probation;
- Denial of pay increase or pay grade;
- Loss of oversight or supervisory responsibility;
- Demotion;
- Transfer;
- Reassignment;
- Assignment to a new supervisor;
- Restriction of professional development resources;
- Suspension with pay;
- Suspension without pay;
- Termination (in compliance with I.C. § 33-513(5), in the case of certificated employees);

- Other actions: In addition to or in place of the above sanctions, the District may assign any other sanctions as deemed appropriate.

1. **Burden of proof.** When determining whether the Respondent is responsible for violating Policy 502.70, Policy 403.71, Policy 403.8 or any other applicable policy, handbook provision or Code of Ethics or conduct by discriminating based on sex, for Sexual Harassment as defined herein, discrimination, and/or retaliation, the decision-maker shall apply the clear and convincing evidence standard; which requires that the evidence proves there is a high probability that the Respondent violated the policy or procedure\*\*. \*\*
2. **Appeals.** Any party may file a request for appeal in writing to the Coordinator within **seven (7) school** days of the delivery of the notice of a final outcome.
3. **Supportive Measures:** Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties. Supportive Measures are designed to restore or preserve access to the District's education program or activity, including measures designed to protect the safety of all parties or the District's educational environment, and/or deter Title IX Sexual Harassment. Examples of Supportive Measures may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services;
- Referral to the Employee Assistance Program;
- Referral to community-based service providers;
- Education of the school community or community subgroup(s);
- Altering work arrangements for employees;
- Safety planning;
- Providing individual safety plans;
- Providing transportation accommodations;
- Implementing contact limitations, such as no contact orders, between the parties (note: allegations of violations of a no contact order will be investigated as collateral misconduct under this process);
- Academic support, extensions of deadlines, or other course or program-related adjustments;
- Emergency warnings;
- Class schedule modifications, withdrawals, or leaves of absence;
- Increased security and monitoring of certain areas of the school; and
- Any other actions deemed appropriate by the Coordinator.

1. **Recognition of privileges:** At no time during this grievance procedure may any evidence (whether through testimony or documents) be required, admitted, relied upon, or otherwise obtained by asking questions or admitting evidence that constitutes, or seeks disclosure of, information protected by a legally recognized privilege, unless the person holding the privilege has knowingly and freely waived the privilege.

2. **Recordkeeping:**

- The District's Title IX Coordinator shall maintain for a period of **seven (7) years** records of:
  - Each Sexual Harassment, discrimination and/or retaliation investigation, including any determination regarding responsibility and 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; and
  - All materials used to train coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The District shall make these training materials publicly available on its website.
- For each response to a report of harassment, discrimination or retaliation based on sex, the District shall create, and maintain for a period of **seven (7) years**, records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of sexual harassment. In each instance, the District shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it took measures designed to restore or preserve equal access to the District's education program or activity. If the District does not provide a Complainant with supportive measures, then the Coordinator must document the reasons why such a response was not clearly unreasonable in light of the known circumstances (i.e., was not a result of sex discrimination). The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken or to be taken.

## Revision of These Procedures

The District reserves the right to make changes to these procedures in its sole discretion, as necessary. If laws or regulations change or court decisions alter the requirements of Title IX in a way that impacts these procedures, such new laws, regulations or court decisions shall be controlling and this document shall be construed to comply with the most recent government laws regulations or court holdings.

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