

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

A. Grievance Process Generally

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 investigator, decision maker and appeal officer involved in the investigation of a formal complaint shall not be the same person. Although the Title IX Coordinator may also be the investigator, the Title IX Coordinator shall not serve as the decision maker or appeal officer in any investigation.

If any person involved in an investigation has a concern that the designated investigator, decision-maker, or appeal officer 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 whether to designate a different internal investigator, decision-maker, or appeal officer. In their sole discretion, the Title IX Coordinator may choose to retain an outside investigator, decision-maker, or appeal officer.

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, only when such removal is necessary to protect the student or another individual from an immediate threat to physical health or safety. If a student has an 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 or section 504 staff and in compliance with relevant IDEA or Section 504 requirements.

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

The District will attempt to complete the grievance process within sixty (60) District working days, not including any time for an appeal of the Determination of Responsibility. 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 delay or extension.

B. Grievance Process for Formal Complaints

A complainant may file a formal complaint by submitting the complaint in person, by mail, by telephone, or by e-mail to the Title IX Coordinator or designee. If a verbal report of sexual harassment is made, the complainant will be asked to submit a written complaint. If a complainant refuses or is unable to submit a written complaint, the Compliance Coordinator or other District employee to whom the report was made will summarize the verbal complaint in writing and sign the summary.

If a complainant does not file a formal complaint, the Title IX Coordinator in their sole discretion, may sign a formal complaint and initiate the grievance process. The decision to initiate the grievance process over the wishes of the complainant should not be clearly unreasonable in light of the known circumstances. The Title IX Coordinator should document the reasons for signing or not signing a formal complaint including why the decision was not deliberately indifferent.

A complaint should be filed immediately after alleged sexual harassment occurs and as soon as possible to ensure the best possible investigation. Delay in filing can result in an impaired investigation due to lack of sufficient evidence and a compromised ability to rely on recollections of parties and witnesses.

Following the filing of a formal complaint, the Title IX Coordinator will provide written notice to the complainant and the respondent of the allegations of the formal complaint and 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 notice of the complainant's and respondent's rights to have an attorney or non-attorney advisor.
- The right of complainant and respondent to inspect and review any evidence.
- The prohibition on providing false statements or evidence in connection with the complaint investigation.

If additional allegations arise during an investigation and will be investigated, the Title IX Coordinator or investigator will provide written notice of those additional allegations to both the complainant and respondent.

C. Duty to Report Child Abuse / Law Enforcement Investigation

Title IX sexual harassment 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 abuses 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 appeal officer reasonably believe that a law enforcement investigation will commence in regard to the sexual harassment reported to the District, they reserve the right to temporarily suspend the grievance process and investigative efforts, but will continue supportive measures as appropriate; unless in conjunction with the law enforcement authorities it is determined that continuation of the internal investigation during a pending law enforcement investigation is permissible and necessary. If the investigation has been delayed due to a law enforcement investigation, as soon as the District becomes aware that the law enforcement investigation has concluded, the grievance process will resume. 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.

D. Informal Resolution

After a formal complaint has been filed and at any time during the grievance process before a determination is reached, allegations may be resolved informally only if a formal complaint is filed and only if the complaint does not allege that a District employee harassed a student.

As part of the informal resolution process, the Title IX Coordinator may engage in interviews and other fact finding. 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.

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. Informal resolution will proceed pursuant to the procedures set out below.

The District adopts a mediation approach to informal resolution. Efforts to resolve the formal complaint via informal resolution should not extend longer than ten (10) school 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) school 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.

E. Procedures for Informal Resolution

After receipt of a formal complaint of sexual harassment pursuant to the District's Title IX Policy, the Title IX Coordinator will determine whether the complaint is appropriate for referral to informal resolution. The Title IX Coordinator may consider the complainant's wishes in making this determination. If the Title IX Coordinator determines that the formal complaint is appropriate for informal resolution, he/she will send both parties an Invitation to Participate in Informal Resolution Process letter.

If both parties return the Consent to Participate forms, the Title IX Coordinator or designee will initiate the informal resolution process within five (5) school 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) school 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:

- i. Whether the party would like to have a face-to-face meeting (in-person or virtual) with the other party to discuss informal resolution;
- ii. The allegation(s) and facts each party believes are relevant to the allegation(s); and
- iii. 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.

F. 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.
- Either or both parties will participate in an age-appropriate sexual harassment training.
- 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; however, 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.

G. 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. However, 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 as to disclosures by the District pursuant to a public records request, a subpoena for records, or data request from an enforcement agency such as the Office for Civil Rights of the U.S. Department of Education.

H. 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 "sexual harassment" under the applicable Title IX regulations, did not occur in the District's educational program or activity, or did not occur against a person in the United States, the Title IX Coordinator or investigator shall summarily dismiss the formal complaint. The Title IX Coordinator or investigator may dismiss a formal complaint if the complainant requests withdrawal of the complaint, the respondent withdraws from the District or terminates their employment with the District, or specific circumstances prevent the District from gathering appropriate evidence to make a determination regarding the allegations.

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 summarily dismissed, the District may nevertheless take whatever additional disciplinary action it deems appropriate against the respondent under its student code of conduct, employee handbook or relevant policies and procedures.

I. Investigation

The investigation will be premised on a presumption that the respondent is not responsible for the alleged act(s) of sexual harassment, and both parties will be treated equitably during the investigation. The burden of proof is on the District to prove a violation of this Policy by a preponderance of the evidence, which means that it is more likely than not that the respondent engaged in the prohibited behavior.

This Policy prohibits the complainant, the respondent, and any witnesses from knowingly making a false statement or providing false evidence in connection with a Title IX investigation. The District may take disciplinary action under the student code of conduct or employee handbook against individuals who make such 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 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 to review all evidence that is directly related to the allegations in the formal complaint, including any evidence that the investigator does not intend to rely upon, and any exculpatory or inculpatory evidence from any source. If possible, the evidence will be provided to the parties in an electronic format and manner that does not permit copying or downloading of the evidence.

Within ten (10) calendar days of the date on which they were provided with access to the evidence, the parties may prepare and submit to the investigator a written response to the evidence, which the investigator must consider before preparing a final, written investigation report. Following the expiration of the date on which the parties may provide responses to the evidence, the investigator will promptly prepare and issue a written investigation report that fairly summarizes the relevant evidence discovered during the investigation, but no determination of responsibility will be made by the investigator.

J. Determination of Responsibility

The written investigation report and any responses submitted by the complainant and/or respondent will be provided to the District's assigned Decision Maker, who will make the determination regarding responsibility. The Decision Maker will provide each party with an opportunity to submit written, relevant questions for any party or witness within five (5) calendar 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) calendar 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) calendar 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) calendar 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 regarding responsibility, any disciplinary sanctions the District imposes on the respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity shall be provided to the complainant; and
- A description of the right to an appeal, how to request and 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.

K. Appeals

Either the complainant or the respondent may appeal from: (a) the Determination regarding a formal complaint; (b) the District's handling of a report; or (c) the dismissal of a formal complaint, by submitting a written notice of appeal that includes the bases of the appeal to the Decision Maker within ten (10) calendar days of the date of the Determination. No hearing will be held for an appeal.

Written notice of the appeal will be provided to both parties. Either party may file a written response in support of or challenging the Determination and the bases for the appeal within five (5) calendar 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.

L. Confidentiality and Retention of Investigation Information and Records

Except as necessary to complete a thorough and effective investigation and grievance process under this Policy 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. 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.

The Title IX Coordinator will retain investigation files for a time period of no less than seven (7) years, and investigation determination notices will be permanently retained in individual employee and student files.

The records maintained by the District will document that the District's response to allegations of sexual harassment was not deliberately indifferent and that 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 that response was not deliberately indifferent and not clearly unreasonable under the circumstances known at the time.

M. 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, designated investigators, designated decision-makers, designated appeal officer, 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 the Title IX Regulations.

© 2022 The Arizona School Risk Retention Trust

Queen Creek Unified School District
