

**Regulation 4119.12: Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures**

Status: DRAFT

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## I. INTRODUCTION

The District does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX of the Education Amendments of 1972 ("Title IX") and its regulations.

The grievance procedures described in this regulation have been adopted by the District to provide for the prompt and equitable resolution of allegations that a District employee, while participating in or attempting to participate in a District education program or activity, was subjected to discrimination on the basis of sex, including but not limited to, sex-based harassment, retaliation, or other conduct prohibited by Title IX.

This regulation applies to any District education program or activity, including but not limited to, events occurring on school property, during any school-related or school-sponsored activity, on school-sponsored transportation, and/or where the District has disciplinary authority.

This regulation only applies to alleged incidents that occurred on or after August 1, 2024. For alleged incidents of sex discrimination or sexual harassment that occurred prior to August 1, 2024, the procedures that applied at the time of the alleged incident should be used.

Allegations that an employee was subjected to conduct prohibited by Title IX shall be addressed using the grievance procedures in Administrative Regulation ("AR") 4119.12, AR 4219.12, or AR 4319.12, as applicable.

## II. DEFINITIONS

1. *Complaint* means an oral or written request to the District that objectively can be understood as a request for the District to investigate and make a determination about alleged discrimination under Title IX or its regulations. (34 C.F.R. § 106.02)
2. *Complainant* means: (1) a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations; or (2) a person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations and who was participating or attempting to participate in the District's education program or activity at the time of the alleged sex discrimination. (34 C.F.R. § 106.02)
3. *Party* means a complainant or respondent. (34 C.F.R. § 106.02)
4. *Peer retaliation* means retaliation by a student against another student. (34 C.F.R. § 106.02)
5. *Pregnancy or related conditions* means: (1) pregnancy, childbirth, termination of pregnancy, or lactation; (2) medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or (3) recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions. (34 C.F.R. § 106.02)
6. *Respondent* means a person who is alleged to have violated the District's prohibition on sex discrimination. (34 C.F.R. § 106.02)
7. *Retaliation* means intimidation, threats, coercion, or discrimination against any person by the District, a student, or an employee or other person authorized by the District to provide aid, benefit, or service under the District's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process, in grievance procedures, and in any other actions taken by the District under 34 C.F.R. § 106.44 (f)(1). This provision does not limit the District's ability to require an employee to participate as a witness in, or otherwise assist with, a Title IX investigation or proceeding. (34 C.F.R. § 106.02)
8. *Sexual-Based Harassment*: Please see definition outlined in AR 4119.11.
9. *Sex Discrimination*: Please see definition outlined in AR 4119.11. Please note that discrimination can take two

primary forms: 1) Disparate Treatment Discrimination: Any intentional differential treatment of an individual or group of individuals that is based on an individual's actual or perceived protected characteristic(s) and that excludes an individual from participating in, denies the individual the benefits of, or otherwise adversely affects a term or condition of an individual's participation in a District program or activity; and 2) Disparate Impact Discrimination: Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or individual that results in the protected individual(s) being excluded from participation in, being denied the benefits of, or otherwise experience adverse effects to the terms or conditions of their participation in a District program or activity. (Discrimination on the Basis of Gender Identity/Expression: Disparate treatment or unwanted severe or pervasive conduct on the basis of sex, gender identity, or gender expression, including intersex, nonbinary, transgender, gender, two-spirit, and gender-diverse employees are prohibited. Discrimination on the Basis of Pregnancy or Related Conditions: Disparate treatment or unwanted severe or pervasive conduct on the basis of any current, potential, or past pregnancy or any related conditions is prohibited. This includes any discrimination or harassment on the basis of: Pregnancy, childbirth, termination of pregnancy, or lactation; Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.)

10. *Sexual Harassment*: Please see definition outlined in AR 4119.11.

11. *Supportive measures* means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to (34 C.F.R. § 106.02): a) Restore or preserve that party's access to the District's education program or activity, including measures that are designed to protect the safety of the parties or the District's educational environment; or b) Provide support during the District's grievance procedures or during an informal resolution process.

### III. GENERAL TITLE IX REQUIREMENTS

When implementing the District's Title IX grievance procedures, the Title IX Coordinator shall ensure compliance with the following requirements (34 C.F.R. §§ 106.45, 106.44):

1. That Complainants and Respondents are treated equitably.
2. That the Title IX Coordinator, investigator, decisionmaker, appeal decisionmaker, and any facilitator of an informal resolution process do not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. Such persons shall also receive training in accordance with 34 C.F.R. § 106.8. A decisionmaker may be the same person as the Title IX Coordinator or investigator.
3. That the Respondent is presumed not responsible for the alleged sex discrimination until a determination is made at the conclusion of these grievance procedures.
4. That discipline is not imposed on a Respondent for sex discrimination prohibited by Title IX or its regulations unless there is a determination at the conclusion of these grievance procedures that the Respondent engaged in prohibited sex discrimination.
5. That reasonable steps are taken to protect the privacy of the parties and witnesses during the grievance procedures. These steps shall not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses (subject to the District's prohibition on peer retaliation); consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures.
6. That all relevant and permissible evidence – including both inculpatory and exculpatory evidence – is objectively evaluated and that credibility determinations are not based on a person's status as a Complainant, Respondent, or witness.
7. That all evidence considered impermissible or privileged under 34 C.F.R. § 106.45(b) is excluded.

The District prohibits retaliation against an individual for reporting suspected sex discrimination, making a Complaint, being a witness, or otherwise participating in a Title IX investigation or proceeding. Retaliation is illegal under federal and state nondiscrimination laws, prohibited by Board policy, and will result in disciplinary action.

The District shall not disclose personally identifiable information obtained in the course of complying with Title IX regulations, except: (1) when the District has obtained prior written consent from a person with the legal right to consent to the disclosure; (2) when the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue; (3) to carry out the purposes of the Title IX regulations, including action taken to address conduct that reasonably may constitute sex discrimination under Title IX in the District's education program or activity; (4) as required by federal law, federal regulations, or the terms and conditions of a federal award, including a grant award or other funding agreement; or (5) to the extent such disclosures are not otherwise in conflict with Title

IX or its regulations, when required by state or local law or when permitted under Family Educational Rights Privacy Act ("FERPA"), 20 U.S.C. § 1232g, or its implementing regulations, 34 C.F.R. part 99. (34 C.F.R. § 106.44(j))

#### **IV. TITLE IX COORDINATOR/COMPLIANCE OFFICER AND TITLE IX ROLES**

District Title IX Coordinator: The District designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX. The Title IX Coordinator(s) may be contacted at:

Kristy Avila, Civil Rights Officer/Title IX Coordinator  
Mt. Diablo Unified School District  
1936 Carlotta Drive, Room 18  
Concord, CA 94519  
Telephone: (925) 682-8000, Ext. 4291  
Email: [equity@mdusd.org](mailto:equity@mdusd.org)

*Title IX Coordinator Designee:* As appropriate, the District may delegate, or permit the Title IX Coordinator to delegate, specific duties to one or more designee(s). Any District employee who has been directed to act in the role of Title IX Coordinator, Investigator, Decision-Maker, Informal Resolution Facilitator, and/or Appeals Officer shall receive specialized training and ongoing support from the District Title IX Coordinator.

*Investigator:* The individual responsible for gathering all evidence and information relevant to the allegations. The Investigator may also serve as the Title IX Coordinator and/or Decision-Maker.

*Decision-Maker:* The individual responsible for evaluating all relevant information and evidence gathered by the Investigator and related to the complaint. The Decision-Maker is responsible for determining if there is enough evidence to find that it is more likely than not that Board policy, including Board Policy 5145.7 (Title IX), has been violated. The Decision-Maker is also responsible for issuing a written decision letter summarizing the evidence and explaining their findings and the rationale for those findings. The Decision-Maker may also serve as the Investigator and/or Title IX Coordinator.

*Informal Resolution Facilitator:* The individual responsible for facilitating the creation of agreements between all Parties who have voluntarily and willingly agreed to resolve the complaint through Informal Resolution.

*Title IX Appeal Officer:* The individual responsible for evaluating any submitted appeals of the final determination of the complaint. The Title IX Appeal Officer may not be the Investigator, Decision-Maker, or Title IX Coordinator assigned to the complaint in question.

Any individuals designated as a Title IX Coordinator, Investigator, Decision-Maker, Informal Resolution Facilitator, or Appeals Office shall not have any conflict of interest or bias for or against Complainants or Respondents generally or individually. If a conflict exists, the individuals shall disclose the conflict to the Title IX Coordinator or designee who will then identify appropriate alternative staff. Such persons shall receive training in accordance with 34 CFR 106.8. (34 CFR 106.44)

#### **V. NOTIFICATIONS**

To prevent unlawful sex discrimination and sex-based harassment in district programs and activities, the Superintendent or designee shall provide notifications and implement measures to prevent discrimination and harassment as specified in Administrative Regulation 4030 Nondiscrimination/Harassment. In addition to the measures to prevent discrimination specified in Administrative Regulation 4030 - Nondiscrimination/Harassment, the Superintendent or designee shall ensure that a copy of the district's sex discrimination and sex-based harassment policy and regulation:

1. Is displayed in a prominent location in the main administrative building or other area where notices of district rules, regulations, procedures, and standards of conduct are posted (Education Code § 231.5)
2. Is summarized on a poster, which shall be prominently and conspicuously displayed in each bathroom and locker room at each school. The poster may be displayed in public areas that are accessible to and frequented by students, including, but not limited to, classrooms, hallways, gymnasiums, auditoriums, and cafeterias. The poster shall display the rules and procedures for reporting a charge of sexual harassment; the name, phone number, and email address of an appropriate school employee to contact to report sexual harassment; the rights of the reporting student, the complainant, and the respondent; and the responsibilities of the school. (Education Code § 231.6)
3. Is provided as part of any orientation program conducted for new and continuing students at the time the student is enrolled or at the beginning of each quarter, semester, or summer session (Education Code § 231.5)

4. Appears in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures, and standards of conduct (Education Code § 231.5)

## **VI. DUTY TO REPORT PROHIBITED CONDUCT**

An employee shall notify the Title IX Coordinator within one (1) workday when the employee has information about conduct that reasonably may constitute sex discrimination, including but not limited to sex-based harassment, under Title IX or its regulations. (34 C.F.R. § 106.44(c))

Nothing in this regulation alters an employee's obligations to report suspected child abuse or neglect under mandated reporting laws.

Employees who believe that they have, or another employee has, been discriminated against or harassed on the basis of sex are strongly encouraged to report their concern promptly to the Title IX Coordinator or their administration.

The Title IX Coordinator shall monitor the District's education programs and activities for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX or its regulations and take steps reasonably calculated to address such barriers. (34 C.F.R. § 106.44(b))

When notified of conduct that reasonably may constitute sex discrimination under Title IX and its regulations, including but not limited to sex-based harassment, the Title IX Coordinator shall (34 C.F.R. § 106.44(f)):

1. If applicable, immediately report any suspected child abuse in accordance with mandated reporting requirements;
2. Contact the Complainant and/or the individual who reported the conduct to provide information regarding the District's grievance procedures and any informal resolution process, if available and appropriate; offer supportive measures as appropriate; and determine how they wish to proceed; and
3. If a Complaint is made, notify the Respondent of the grievance procedures and any informal resolution process, if available and appropriate, and coordinate supportive measures, as appropriate, for the Respondent.

## **VII. COMPLAINTS**

The following people have a right to make a Complaint of sex discrimination, including a Complaint of sex-based harassment, requesting that the District investigate and make a determination about alleged discrimination under Title IX (34 C.F.R. §§ 106.45(a), 106.02):

1. A Complainant;
2. A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or
3. The District's Title IX Coordinator or designee.

With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a Complaint (34 C.F.R. § 106.45(a)):

1. Any student or employee; or
2. Any person other than a student or employee who was participating or attempting to participate in a District education program or activity at the time of the alleged sex discrimination.

In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, and in the absence or termination of an informal resolution process, the Title IX Coordinator or designee, when notified of conduct that reasonably may constitute sex discrimination, shall determine whether to initiate a Complaint of sex discrimination. To make this fact-specific determination, the Title IX Coordinator or designee must consider, at a minimum, the following factors (34 C.F.R. § 106.44(f)):

1. The Complainant's request not to proceed with initiation of a Complaint;
2. The Complainant's reasonable safety concerns regarding initiation of a Complaint;
3. The risk that additional acts of sex discrimination would occur if a Complaint is not initiated;
4. The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
5. The age and relationship of the parties, including whether the Respondent is an employee of the District;
6. The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;

7. The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and
8. Whether the District could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures.

If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the alleged victim or other person, or that the conduct as alleged prevents the District from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a Complaint. (34 C.F.R. § 106.44(f))

If the Title IX Coordinator initiates a Complaint, the Title IX Coordinator shall notify the alleged victim of the Complaint prior to doing so, as well as provide other notices as required by the Title IX regulations at specific points in the grievance procedures, and appropriately address reasonable concerns about the alleged victim's safety or the safety of others, including by providing supportive measures. (34 C.F.R. § 106.44(f))

Regardless of whether a Complaint is initiated, the Title IX Coordinator shall take other appropriate prompt and effective steps, in addition to steps necessary to effectuate the remedies provided to an individual Complainant, if any, to ensure that sex discrimination does not continue or recur within the District's education program or activity. (34 C.F.R. § 106.44(f))

Complaints of sex discrimination may be consolidated when they arise out of the same facts or circumstances, including Complaints against more than one Respondent, Complaints by more than one Complainant, or Complaints by one party against another party. (34 C.F.R. § 106.45(e)).

## VIII. INITIAL EVALUATION

Upon receipt of a Complaint, the Title IX Coordinator or designee shall conduct a prompt initial evaluation to determine whether to dismiss or investigate a complaint, within the timeline specified in the section below titled "Timelines for Grievance Procedures."

The Title IX Coordinator or designee may dismiss a Complaint of sex discrimination if (34 C.F.R. § 106.45(d)):

1. The District is unable to identify the Respondent after taking reasonable steps to do so;
2. The Respondent is not participating in a District education program or activity and is not employed by the District;
3. The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a complaint, and the Title IX Coordinator determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
4. The Title IX Coordinator or designee determines the conduct alleged in the Complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the Complaint, the Title IX Coordinator or designee shall make reasonable efforts to clarify the allegations with the Complainant.

Upon dismissal, the Title IX Coordinator or designee shall promptly notify the Complainant of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the Title IX Coordinator or designee shall also notify the Respondent of the dismissal and the basis for the dismissal promptly following notification to the Complainant, or simultaneously if notification is in writing. (34 C.F.R. § 106.45(d))

The Title IX Coordinator or designee shall notify the Complainant that a dismissal may be appealed and shall provide the Complainant with an opportunity to appeal the dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the allegations, then the Title IX Coordinator or designee shall also notify the Respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases (34 C.F.R. § 106.45(d)):

1. Procedural irregularity that would change the outcome;
2. New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
3. The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

If the dismissal is appealed, the Title IX Coordinator or designee shall (34 C.F.R. § 106.45(d)):

1. Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the Respondent;
2. Implement appeal procedures equally for the parties;
3. Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the Complaint;
4. Ensure that the decisionmaker for the appeal has been trained consistent with 34 C.F.R. § 106.8;
5. Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
6. Notify the parties of the result of the appeal and the rationale for the result.

When a Complaint is dismissed, the Title IX Coordinator or designee shall, at a minimum, undertake the following: (1) offer supportive measures to the Complainant as appropriate; (2) if the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and (3) take other prompt and effective steps, as appropriate, to ensure that sex discrimination does not continue or recur within a District education program or activity. (34 C.F.R. § 106.45(d))

If a Complaint is dismissed, the conduct may still be addressed pursuant to other Board Policies or District regulations where applicable, including but not limited to BP/AR 1312.3 – Uniform Complaint Procedures.

If after an initial evaluation the Complaint is not dismissed, the Title IX Coordinator shall either initiate the District's grievance procedures or, if available and appropriate and requested by all the parties, an informal resolution process as specified in the section below titled "Informal Resolution Process." (34 C.F.R. § 106.44(f))

## **IX. NOTICE OF ALLEGATIONS**

Upon initiation of the District's Title IX grievance procedures, the Title IX Coordinator or designee shall notify the known parties in writing of the following (34 C.F.R. § 106.45(c)):

1. The District's Title IX grievance procedures and any informal resolution process;
2. Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
3. A statement that retaliation is prohibited; and
4. A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. If a description of the evidence is provided, the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

If, in the course of an investigation, the Title IX Coordinator or designee decides to investigate additional allegations of sex discrimination by the Respondent toward the Complainant that are not included in the notice provided or that are included in a Complaint that is consolidated, the Title IX Coordinator or designee shall notify the known parties of the additional allegations. (34 C.F.R. § 106.45(c))

Upon initiation of the District's Title IX grievance procedures, the Title IX Coordinator or designee shall notify the known parties in writing of the following (34 C.F.R. § 106.45(c)):

1. The District's Title IX grievance procedures and any informal resolution process;
2. Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
3. A statement that retaliation is prohibited; and
4. A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. If a description of the evidence is provided, the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

If, in the course of an investigation, the Title IX Coordinator or designee decides to investigate additional allegations of sex discrimination by the Respondent toward the Complainant that are not included in the notice provided or that are included in a Complaint that is consolidated, the Title IX Coordinator or designee shall notify the known parties of the additional allegations. (34 C.F.R. § 106.45(c))

## **IX. INVESTIGATION PROCEDURE**

The Title IX Coordinator or designee shall designate an investigator and a decisionmaker to determine whether sex discrimination occurred. The investigator may be the same person as the decisionmaker. Neither the investigator nor the decisionmaker may have a conflict of interest or bias and both shall have received training in accordance with 34 C.F.R. § 106.8.

The designated investigator shall conduct an investigation that is adequate, reliable, and impartial by (34 C.F.R. § 106.45(b), (f)):

1. Ensuring that the burden is on the District's investigator – not on the parties – to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.
2. Ensuring that the parties have an equal opportunity to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.
3. Reviewing all evidence gathered through the investigation and determining what evidence is relevant and what evidence is impermissible regardless of relevance.
4. Excluding the following types of evidence as impermissible, including questions seeking such evidence:
  1. Evidence that is protected under a privilege recognized by Federal or State law unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
  2. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the District obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
  3. Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.
5. Providing each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, by:
  1. Providing an equal opportunity to access such evidence, or an accurate description of this evidence. If the parties are provided with a description of the evidence, the designated investigator shall, upon the request of any party, provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence.
  2. Providing a reasonable opportunity to respond to the evidence or the accurate description of the evidence for a period of five (5) calendar days, unless such review period is voluntarily waived by both parties.
  3. Taking reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.
6. If the complaint is against an employee, rights conferred under an applicable collective bargaining agreement shall be applied to the extent they do not conflict with the Title IX requirements.

The investigator shall complete the investigation within the timeline specified in the section below titled "Timelines for Grievance Procedures."

At the completion of the investigation, the investigator shall provide to the parties an evidence review period as specified in the section below titled "Timelines for Grievance Procedures."

## **IX. WRITTEN DECISION**

1. At the completion of the investigation, if the designated investigator is not the decisionmaker, the investigator shall provide all of the relevant and not otherwise impermissible evidence obtained in the investigation to the decisionmaker.
2. If credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination, the District must ensure that the decisionmaker is able to question parties and witnesses to adequately assess credibility. Credibility determinations shall not be based on a person's status as a Complainant, Respondent, or witness. (34 C.F.R. § 106.45(b), (g))
3. The decisionmaker shall apply the preponderance of the evidence standard to make a determination as to whether sex discrimination occurred. If the decisionmaker is not persuaded under the preponderance of the

evidence standard that sex discrimination occurred, the decisionmaker must not determine that sex discrimination occurred. (34 C.F.R. § 106.45(b), 106.45(h))

4. The District shall notify the parties in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the Complainant and Respondent to appeal. (34 C.F.R. § 106.45(h))
5. The written decision shall be issued to the parties within the timeline specified in the section below titled "Timelines for Grievance Procedures."

## **XII. APPEALS**

Either party may appeal the determination of a Complaint on one of the following bases:

1. Procedural irregularity that would change the outcome;
2. New evidence that would change the outcome and that was not reasonably available when the determination or dismissal was made; or
3. The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

An appeal must be made in writing to the Title IX Coordinator within five (5) business days of the issuance of the written determination and must state the basis for the appeal.

Upon receipt of an appeal, the Title IX Coordinator shall promptly notify the other party of the appeal, and that other party shall have five (5) calendar days to respond to the request for an appeal.

The Superintendent or designee shall designate an appeal decisionmaker to hear the appeal. The appeal decisionmaker shall not have a conflict of interest or bias and shall not have been previously involved in the grievance procedures, including any informal resolution process, for the Complaint. An appeal decision shall be issued in writing to both parties within the timeline specified in the section below titled "Timelines for Grievance Procedures."

If either party is dissatisfied with the decision following the appeal, the party may file an appeal with the Board of Education. The Board may consider the matter at its next regular Board meeting, or at a special Board meeting convened in order to meet any applicable timelines. When required by law, the matter shall be considered in closed session. The Board may decide not to hear the complaint, in which case the decision on appeal shall be final.

Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights within 180 days of the date of the most recently alleged misconduct.

## **XIII. TIMELINES FOR GRIEVANCE PROCEDURES**

The District's Title IX grievance procedures shall be completed within the following timelines, unless extended as specified below, or as otherwise permitted by law:

1. The Title IX Coordinator shall make an initial evaluation to determine whether to dismiss or investigate a Complaint;
2. The investigation shall be completed within sixty (60) calendar days from receipt of the Complaint;
3. If the District offers an informal resolution process as provided under this regulation, and the parties voluntarily engage in such a process, the timelines otherwise provided in this regulation shall exclude the time spent in the informal resolution process;
4. At the completion of the investigation, the parties shall be provided with the evidence or an accurate description of the evidence, and a reasonable opportunity to respond to the evidence or the accurate description of the evidence, for a period of five (5) calendar days, unless such review period is voluntarily waived by both parties;
5. A written decision shall be sent to the parties within ten (10) calendar days of the completion of the evidence review period;
6. Any requests for an appeal shall be made within five (5) calendar days of the date the written decision is sent to the parties;
7. Any response from a party to the request for an appeal shall be submitted within five (5) calendar days after receiving notice of the appeal;
8. An appeal decision shall be issued within fifteen (15) calendar days of receipt of the request for an appeal.
9. Any requests for an appeal to the Board of Education shall be made within five (5) business days of the date



the written decision is sent to the parties.

Any timelines specified in this regulation may be subject to reasonable extensions on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay. (34 C.F.R. § 106.45(b))

#### **XIV. SUPPORTIVE MEASURES**

When notified of conduct that reasonably may constitute sex discrimination under Title IX, the Title IX Coordinator or designee shall offer and coordinate supportive measures as appropriate for the Complainant and/or Respondent to restore or preserve that person's access to District education programs or activities or provide support during the District's Title IX grievance procedures or during an informal resolution process. Supportive measures may include: counseling; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in work, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment. (34 C.F.R. § 106.44(g))

If the Complainant or Respondent is a student with a disability, the Title IX Coordinator or designee shall consult with one or more members, as appropriate, of the student's (IEP) team or 504 team, if any, to determine how to comply with the requirements of the IDEA and/or Section 504 of the Rehabilitation Act of 1973. (34 C.F.R. § 106.44(g))

Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties or the District's educational environment, or to provide support during the District's grievance procedures or during any informal resolution process. Supportive measures may not be imposed for punitive or disciplinary reasons. (34 C.F.R. § 106.44(g))

A Complainant or Respondent shall be provided with a timely opportunity to seek, from an appropriate and impartial employee, modification or reversal of the decision to provide, deny, modify, or terminate supportive measures applicable to them. The impartial employee must be someone other than the employee who made the challenged decision and must have authority to modify or reverse the decision, if the impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the definition of supportive measures in 34 C.F.R. § 106.2. A Complainant or Respondent shall also be provided with the opportunity to seek additional modification or termination of a supportive measure applicable to them if circumstances change materially. (34 C.F.R. § 106.44(g))

Upon the conclusion of the grievance procedures or any informal resolution process, the District may continue with the supportive measures, or modify or terminate such measures, as appropriate. (34 C.F.R. § 106.44(g))

Information about any supportive measures shall not be disclosed to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity, or when an exception in 34 C.F.R. § 106.44 applies. (34 C.F.R. § 106.44(g))

#### **XV. EMERGENCY REMOVAL FROM SCHOOL**

Discipline shall not be imposed on a Respondent for sex discrimination prohibited by Title IX or its regulations unless there is a determination at the conclusion of these grievance procedures that the Respondent engaged in prohibited sex discrimination. However, the District may remove a Respondent from the District's education program or activity on an emergency basis, provided that the District undertakes an individualized safety and risk analysis, determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal. A student with a disability may only be removed from school on an emergency basis in accordance with the IDEA and/or Section 504 of the Rehabilitation Act of 1973. (34 C.F.R. § 106.44(h))

If a District employee is the Respondent, the employee may be placed on administrative leave during the pendency of the grievance process where permitted by law and any applicable collective bargaining agreement.

#### **XVI. INFORMAL RESOLUTION PROCESS**

At any time prior to determining whether sex discrimination occurred under these procedures, the District may offer an informal resolution process to the parties if appropriate. However, the District shall not offer an informal resolution process for allegations that an employee engaged in sex-based harassment of a student. (34 C.F.R. §

106.44(k))

The District has discretion to determine whether it is appropriate to offer an informal resolution process to the parties when it receives information about conduct that reasonably may constitute sex discrimination or when a Complaint of sex discrimination is made, and may decline to offer informal resolution despite one or more of the parties' wishes. Circumstances when the District may decline to allow informal resolution include but are not limited to when the District determines the alleged conduct would present a future risk of harm to others. (34 C.F.R. § 106.44(k))

The District shall not require or pressure the parties to participate in an informal resolution process. The District shall obtain the parties' voluntary consent to the informal resolution process and shall not require waiver of the right to an investigation and determination of a Complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right. (34 C.F.R. § 106.44(k))

The facilitator for the informal resolution process shall not be the same person as the investigator or the decisionmaker in the District's grievance procedures. Any person designated by the District to facilitate an informal resolution process shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. Any person facilitating informal resolution shall receive training under 34 C.F.R. § 106.8. (34 C.F.R. § 106.44(k))

Before initiation of an informal resolution process, the District must provide to the parties notice that explains (34 C.F.R. § 106.44(k)):

1. The allegations;
2. The requirements of the informal resolution process;
3. That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the District's grievance procedures;
4. That the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming grievance procedures arising from the same allegations;
5. The potential terms that may be requested or offered in an informal resolution agreement (including notice that an informal resolution agreement is binding only on the parties), which could include but are not limited to:
  1. Restrictions on contact; and
  2. Restrictions on the Respondent's participation in one or more of the District's programs or activities or attendance at specific events, including restrictions the District could have imposed as remedies or disciplinary sanctions had the District determined at the conclusion of the District's grievance procedures that sex discrimination occurred.
6. What information the District shall maintain and whether and how the District could disclose such information for use in grievance procedures, if grievance procedures are initiated or resumed.

Any informal resolution agreement reached under this process shall not prevent or restrict the disclosure of factual information. (Civ. Proc. Code 1001)

If the District provides the parties with an informal resolution process, the Title IX Coordinator must, to the extent necessary, take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the District's education program or activity. (34 C.F.R. § 106.44(k))

## **XVII. REMEDIES**

If there is a determination that sex discrimination occurred, the Title IX Coordinator shall, as appropriate, coordinate the provision and implementation of remedies to a Complainant and other persons the District identifies as having had equal access to the District's education program or activity limited or denied by sex discrimination; coordinate the imposition of any disciplinary sanctions on a Respondent, including notification to the Complainant of any such disciplinary sanctions; and take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the District's education program or activity. (34 C.F.R. § 106.45(h))

If there is a determination that sex-based harassment occurred, the remedies that may be provided by the District to the Complainant include but are not limited to counseling services, contact limitations between the parties, or adjustments to academic deadlines, classroom assignments, or course registrations.

## **XVIII. CORRECTIVE/DISCIPLINARY ACTIONS**

Actions that may be imposed on an employee determined to be responsible for sex discrimination, including but not

limited to, sex-based harassment include, but are not limited to:

#### *Corrective/Disciplinary Actions*

The District shall not impose any disciplinary sanctions or other actions against a respondent, other than supportive measures as described above in the section "Supportive Measures," until the complaint procedure has been completed and a determination of responsibility has been made.

When an employee is found to have committed sexual harassment or retaliation, the District shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

When an employee is found to have committed prohibited sex discrimination or retaliation, the District shall take appropriate disciplinary action, up to and including dismissal.

The District may not impose discipline on a Respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the District's grievance procedures that the Respondent engaged in prohibited sex discrimination. (34 C.F.R. § 106.45(h))

The District shall not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the District's determination of whether sex discrimination, including sex-based harassment, occurred. (34 C.F.R. § 106.45)

#### **XIX. RECORDKEEPING**

The Superintendent or designee shall maintain the following for at least a period of seven years (34 C.F.R. § 106.8):

1. For each Complaint of sex discrimination, records documenting the informal resolution process (if any) or the grievance procedures and the resulting outcome;
2. For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or its regulations, records documenting the actions the District took to meet its obligations under 34 C.F.R. § 106.44, including supportive measures offered and implemented; and
3. All materials used to provide training under 34 C.F.R. § 106.8. The District shall make these training materials available upon request for inspection by members of the public.

For complaints containing allegations of childhood sexual assault within the meaning of Code of Civil Procedure 340.1, the Superintendent or designee shall also indefinitely maintain the following:

1. A record of the allegation(s);
  2. A record of the investigation procedures followed;
  3. A record of the written determination;
  4. A record of the corrective action implemented, if any;
  5. A record of any appeals and the outcome of the same; and
  6. All training materials addressing the prohibition and investigation of childhood sexual assault.
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