

# **TITLE IX SEXUAL HARASSMENT COMPLAINT** **PROCEDURE**

The procedures below are designed to address reports of sexual harassment in violation of Title IX and policy 1710/4021/7230. All incidents of conduct that could constitute sexual harassment under that policy are to be reported in accordance with these procedures, including situations where the incidents may also constitute violations of other board policies or standards of conduct. Conduct that may also constitute a violation of other board policies or standards of conduct may be investigated and addressed pursuant to the usual procedures for addressing such violations, whether or not there is also an investigation and adjudication under the Title IX process described below.

This Title IX Sexual Harassment Complaint Procedure is currently being implemented in WCPSS to address reports of sexual harassment in violation of Title IX and Policy 1710/4021/7230. This document may be modified or updated as appropriate, and any modifications or updates will be incorporated here.

## **A. DEFINITIONS**

### **1. Sexual Harassment**

Sexual harassment shall have the definition set forth in [policy 1710/4021/7230](#).

### **2. Report**

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

Making a report initiates the interactive process with the complainant described below. No disciplinary action will be taken against a respondent for sexual harassment based on a report alone under the sexual harassment policy and this procedure.

### **3. Formal Complaint**

A formal complaint is a document signed and filed with the Title IX coordinator by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that school officials investigate the allegation(s). Filing a formal complaint initiates the Title IX process set forth herein.

At the time of filing a formal complaint, a complainant must be participating in or

attempting to participate in the education program or activities of the school system.

4. Complainant

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

5. Respondent

The respondent is the individual(s) who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

6. Parties

The parties are the Complainant(s) and Respondent(s).

7. Title IX Coordinator

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

For allegations or reports that a student has engaged in sexual harassment:

Dr. Rodney Trice, *Title IX Coordinator for Students*

Assistant Superintendent of Equity Affairs

Phone: 919-694-0524

Email: rtrice@wcpss.net

For allegations or reports that an employee, volunteer or contractor has engaged in sexual harassment:

Bradley Hicks, *Title IX Coordinator for Employees*

Senior Administrator for Compliance – Employee Relations

Phone: 919-533-7221

Email: blhicks@wcpss.net

8. Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the school system's education program and activities or work environment without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the school system's educational or work environment, or deter sexual harassment.

Supportive measures available to the parties include, but are not limited to, counseling, mental health services referral, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual restrictions on contact between the parties, changes in work locations or school assignment, leaves of absence, increased security and monitoring, and other similar measures determined by school officials to be necessary to protect the safety or educational or employment.

9. Days

Days are calendar days unless specified otherwise.

10. Student(s)

“Student(s)” means the student and/or the student’s parent or legal guardian unless the context clearly indicates otherwise.

11. Actual Knowledge

“Actual knowledge” means a school employee has notice of sexual harassment or allegations of sexual harassment.

**B. REPORTING SEXUAL HARASSMENT**

Any student who believes he or she is a victim of sexual harassment occurring in the school system’s education programs or activities is encouraged to report the matter to the student’s principal or to the Title IX Coordinator for Students. Reports may also be made to a teacher, counselor, assistant principal, teacher assistant, or any other school employee.

Any employee who believes he or she is a victim of sexual harassment occurring in the work environment is encouraged to report the matter to the employee’s principal/supervisor or to the Title IX Coordinator for Employees.

Any employee or member of the board of education who has actual knowledge of sexual harassment or allegations of sexual harassment occurring in the education program, any activity of the school system, or the work environment must report that information immediately to the appropriate Title IX coordinator.

Actual knowledge includes any report of sexual harassment, any conduct witnessed that could reasonably be sexual harassment, or any reason to believe that someone may have been sexually harassed.

Any doubt about whether particular conduct is possible sexual harassment should be resolved in favor of reporting the conduct.

All other members of the school community are strongly encouraged to report any act that may constitute an incident of sexual harassment to the school principal, the appropriate Title IX coordinator, or the superintendent.

**C. SCHOOL OFFICIALS' RESPONSE TO ACTUAL KNOWLEDGE OF SEXUAL HARASSMENT**

**1. Initial Response by Title IX Coordinator**

Upon receiving a report of alleged sexual harassment, the Title IX coordinator shall promptly contact the complainant within three days, excluding weekends and holidays, absent extenuating circumstances. If the complainant is a student, the complainant's parent or guardian should be contacted confidentially unless, in the exercise of good judgment, the coordinator determines that parental involvement is not necessary based on the nature of the offense, the student's age, the wishes of the student, and other relevant circumstances. The Title IX coordinator shall also notify the principal of the report and, if an employee is the complainant or respondent, the Senior Director of Employee Relations or designee.

When contacting the complainant (and parent or guardian), the Title IX coordinator shall discuss and offer supportive measures, explain the process of filing a formal complaint and the steps that will follow the filing of a formal complaint, and explain the process of investigating potential violations of any other board policies or provisions of the Code of Student Conduct that may be applicable. The Title IX coordinator shall document the initial response and discussion for any report.

**2. Title IX Coordinator Arranges Implementation of Supportive Measures**

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

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

If the complainant declines to file a formal complaint following the interactive process described above, the Title IX coordinator shall determine on a case-by-case basis, and in consultation with the school attorney and the other Title IX coordinator, as appropriate, whether to sign, i.e., file, a formal complaint to initiate the Title IX process.

The Title IX coordinator shall document the decision of whether to sign a complaint and the reasons for that decision.

Should there be a determination not to proceed with a formal complaint, but should the circumstances indicate a potential violation of any other board policy or provision of the Code of Student Conduct, then the Title IX coordinator will refer the matter to appropriate staff in accordance with those policies or provisions.

4. Removal of Respondent from School or Employment

a. Emergency Removal of Students

Any student respondent is subject to removal from the school system's education program and activities, or any part of the program or activities, on an emergency basis if the school leadership, in consultation with the Title IX Coordinator, conducts an individualized safety and risk analysis and determines that removal is justified because the person poses an immediate health or safety threat to any person arising from the allegations of sexual harassment.

The emergency removal may take place regardless of whether a formal complaint has been filed. However, any such removal must be consistent with federal and state law, including any applicable law protecting the rights of individuals with disabilities. The respondent shall receive notice of the removal and an opportunity to challenge the decision by written appeal to Equity Affairs, with the review of the decision to be made by an individual who is not the Title IX Coordinator, immediately following the removal.

The Title IX Coordinator shall document all emergency removal decisions under this subsection, including the immediate threat to health or safety that justified the removal.

b. Removal of Employees

An employee may be placed on administrative leave during the pendency of the Title IX process, if consistent with state law and in accordance with any applicable requirements of state law.

5. Supportive Measures

Supportive measures will be available to both the complainant and respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures will remain confidential to the extent that maintaining such confidentiality does not impair the ability to provide the supportive measures. The Title IX coordinator is responsible for coordinating the effective implementation of supportive measures.

#### **D. FILING A FORMAL COMPLAINT**

A formal complaint initiates the Title IX process. A formal complaint may be filed by an individual who believes he or she has been sexually harassed, or by the Title IX coordinator. A parent or guardian may act on behalf of a student complainant. In accordance with law, only the complainant and the Title IX coordinator may initiate the Title IX process; no other individuals or school officials shall have authority to do so.

The complaint should (1) contain the name and address of the complainant and the student's parent or guardian if the complainant is a minor student, (2) describe the alleged sexual harassment, (3) request an investigation of the matter, and (4) be signed by the complainant or otherwise indicate that the complainant is the person filing the complaint or be signed by the Title IX coordinator if he or she files the formal complaint.

The complaint may be filed with the Title IX coordinator in person, by mail, or by email. Complaint forms may be obtained from the Title IX coordinator or on the school system website.

Upon receipt of a formal complaint of sexual harassment, the Title IX coordinator shall engage in an interactive process with the complainant, consider the provision of supportive measures in light of the complainant's wishes, and provide supportive measures as appropriate, unless the Title IX coordinator has already done so in response to an initial report of the same allegation of sexual harassment.

#### **E. TIMELINESS OF TITLE IX PROCESS**

School officials shall make a good faith effort to conduct a fair, impartial Title IX process in a timely manner designed to provide all parties with a prompt and equitable resolution. It is expected that in most cases, the Title IX process will be concluded through the adjudication phase by the decision-maker within 90 days after filing the formal complaint. The school district reserves the right to extend this time frame or any deadline for good cause with written notice to the parties of the delay and the reason for the delay. Good cause may include but is not limited to the absence of the parties or witnesses, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.

The Title IX coordinator or other responsible school official shall make reasonable efforts to keep the complainant and respondent apprised of progress being made during any period of delay.

#### **F. TITLE IX PROCESS FOR FORMAL COMPLAINTS: PART I – INVESTIGATION**

1. Step 1 – Notice of Allegations

- a. Upon the filing of a formal complaint, the Title IX coordinator shall, within five working days, provide the known parties written notice of the allegations that includes:
  - i. notice of the allegations of sexual harassment in sufficient detail known at the time to permit the parties to prepare a response before any initial interview. Sufficient details include:
    - a) the identities of the parties involved, if known;
    - b) the conduct allegedly constituting sexual harassment; and
    - c) the date and location of the alleged incident, if known;
  - ii. a copy of this procedure;
  - iii. notice that the parties may have an advisor of their choice and that either party may inspect and review any evidence;
  - iv. notice of the provisions in board policy or regulations, that prohibit students and employees from knowingly making false statements or knowingly submitting false information including policy 4309, *Student Code of Conduct* (Level II-1), and R&P 2305/3005/4005, *Code of Ethics and Standards of Conduct* (Section 2305.5/3005.5/4005.5).
  - v. a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the Title IX process.
- b. If during the investigation, the school system decides to investigate allegations of sexual harassment not included in the initial notice provided above, the Title IX Coordinator will provide notice of the additional allegations to the parties.

2. Step 2 – Review Grounds for Dismissal of the Formal Complaint

The Title IX coordinator shall review the allegations and determine whether the formal complaint must be dismissed without further investigation because the conduct alleged in the formal complaint, even if assumed true, (1) would not constitute sexual harassment, (2) did not occur in the school system's education program or activities, including the work environment, or (3) did not occur against a person in the United States. Such a dismissal does not preclude action under another provision of the Code of Student Conduct, board policy, or expected

standards of employee behavior. The complaint will not be dismissed at this stage on the basis that the allegations are frivolous, without merit, or otherwise unfounded.

Upon a dismissal, the Title IX coordinator must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties. The parties have the right to appeal the decision as provided in Section H.

The Title IX coordinator shall refer the matter that was the subject of the dismissed complaint to the principal or appropriate staff for further action as warranted.

### 3. Step 3 – Initiating the Investigation

If the complaint may proceed, the Title IX coordinator shall notify the appropriate investigator or investigators, who shall investigate the formal complaint. This procedure shall refer to a single investigator; however, in appropriate circumstances there may be multiple individuals designated to serve as investigators.

- a. The investigator shall not be a party to the complaint under investigation. The investigator of a formal complaint is ordinarily determined as described below; however, the Title IX coordinator, in consultation with the superintendent, may determine that conflict of interest, the appearance of bias, or other individual circumstances warrant the assignment of a different investigator.
  1. If the respondent is a student, the investigator is the principal or designee of the school with jurisdiction over the incident.
  2. If the respondent is an employee or applicant for employment, the investigator is the senior director of employee relations or designee.
  3. If the respondent is neither a student nor an employee/applicant for employment, the senior director of employee relations or designee shall be the investigator.
  4. Notwithstanding the above designations, (1) if the respondent is the senior director of employee relations, the superintendent or designee shall investigate the complaint; (2) if the respondent is the superintendent or a member of the board, the Title IX coordinator shall immediately notify the board chair (or vice chair, if the allegation is against the board chair) who shall direct the board attorney to investigate, unless the board chair or vice chair determines that outside counsel should be engaged to investigate.



5. The investigator is authorized to utilize other district personnel or school administrators in connection with conducting the investigation.

- b. The investigator may request assistance from the appropriate Title IX coordinator to conduct the investigation.
- c. The Title IX coordinator and the investigator shall jointly assess the need for supportive measures for either party. Supportive measures provided to the complainant or respondent will be maintained as confidential to the extent that maintaining such confidentiality does not impair the ability to provide the supportive measures.
- d. The investigator shall explain the process of the investigation to the complainant and respondent.

4. Step 4 – Conducting the Investigation

The investigator is responsible for gathering evidence sufficient to reach a determination of whether the allegations in the formal complaint are true and whether the facts as determined by the investigator establish that sexual harassment as defined in policy occurred. In so doing, the investigator shall impartially, promptly, and thoroughly investigate the complaint.

- a. The investigator shall interview all individuals who may have relevant information, including (1) the complainant; (2) the respondent; (3) individuals identified by the complainant or respondent as witnesses with relevant information to the incident or expert witnesses; and (4) any other individuals as determined by the investigator to potentially have relevant information. Prior written notice shall be provided to a party whose participation is invited or expected for any investigative interview or meeting. The investigator shall provide the complainant and respondent an equal opportunity to present fact and expert witnesses and other evidence tending to prove or disprove the allegations.
- b. The investigator shall ensure that the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the school system and not on the complainant or respondent.
- c. The investigator shall not restrict the ability of either party to gather and present relevant evidence or to discuss the allegations under investigation.
- d. The formal complaint and the investigation will be kept confidential to the extent possible. Information may be shared only with individuals who need the information in order to investigate and address the complaint appropriately and those with a legal right to access the information. Any

requests by the complainant or respondent for further confidentiality will be evaluated within the context of the legal responsibilities of the school system.

The investigator may, with approval of the Title IX coordinator, dismiss the formal complaint or any allegations therein if at any time during the investigation or decision-making process: (1) the complainant notifies the Title IX coordinator in writing that he or she would like to withdraw the formal complaint or any allegations therein; (2) the respondent is no longer enrolled in, employed by, or otherwise associated with the school system; or (3) specific circumstances prevent school officials from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. Upon dismissal, the Title IX coordinator shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties. The parties have the right to appeal the decision as provided in Section H.

The investigator may consider the matter that was the subject of the dismissed complaint for action in accordance with board policy for violation of other expected standards of student or employee behavior.

5. Step 5 – Investigative Report and Opportunity to Review Evidence

- a. The investigator shall prepare an investigative report that fairly summarizes the relevant evidence.
- b. Before completing the investigative report, the investigator shall send to each party and the party's advisor, if any, in hard copy or electronically, all the evidence collected which is directly related to the allegations raised in the formal complaint. The parties shall have 10 days to submit a written response for the investigator's consideration before the investigator finalizes the investigative report.
- c. Following the parties' opportunity to respond to the written evidence, the investigator shall finalize the investigative report, including a recommendation on the question of responsibility and any recommended disciplinary sanction.

The investigative report shall also include a description of the procedural steps taken, starting with the receipt of the formal complaint and continuing through the preparation of the investigative report, and including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence.

- d. The investigator shall provide a copy of the investigative report to each party and the party's advisor, if any, for their review and written response. The parties shall have 10 days to provide a written response to the

investigative report.

- e. The investigator shall provide to the decision-maker a copy of the investigative report, the relevant evidence, and the parties' written responses to the report.

## **G. TITLE IX PROCESS FOR FORMAL COMPLAINTS: PART II – ADJUDICATION**

The superintendent or designee (hereinafter “superintendent”) shall serve as the decision-maker. In general, for Title IX human resources matters, the decision-maker will be the assistant superintendent for human resources, and for Title IX student matters, the decision-maker will be the area superintendent. The decision-maker shall provide for the exchange of questions between the parties and a decision on responsibility in a manner consistent with state law and as provided below.

### **1. Step 1 – Exchange of Questions and Answers**

After the parties are sent the investigative report, the decision-maker shall (1) provide the parties an opportunity to submit a reasonable number of written, relevant questions that the party wants asked of any other party or witness, (2) provide each party with the answers, and (3) allow for additional, limited follow-up questions from each party in accordance with a reasonably prompt time frame established by the decision-maker. The parties shall submit their initial set of written questions to the decision-maker within 10 days of the issuance of the investigative report.

The decision-maker shall determine whether the number and scope of questions are reasonable. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, 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 by the complainant, 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. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

### **2. Step 2 – Student's Opportunity to Request a Hearing**

In cases where the respondent is a student, where the recommended discipline by the investigator is for a long-term suspension or expulsion, and where the student has not already received the equivalent level of discipline (such as a long-term suspension or expulsion) pursuant to other provisions of the Code of Conduct for the same conduct at issue in the Title IX investigation, after the investigative report has been sent to the parties, both parties shall have three school business days to request a hearing. If either party requests a hearing, the long-term suspension

hearing procedures described in policy 4300, Due Process, and 4300-R&P shall be followed, except that (1) both parties shall have the right to participate in the hearing to the extent required by Title IX; (2) all the evidence sent to the parties pursuant to subsection F.5.b above will be made available at the hearing to give each party equal opportunity to refer to such evidence during the hearing; and (3) prior to the hearing, both parties shall have a limited opportunity to submit and respond to written questions and follow-up questions as provided above.

3. Step 3 – Decision on the Question Regarding Responsibility

Following the exchange of questions and/or hearing as described above, the decision-maker shall decide the question regarding responsibility, any disciplinary action, and any other measures the decision-maker deems appropriate. The decision-maker shall consider all the relevant evidence objectively, including evidence in the investigative report, any testimony of witnesses at the hearing, if one was held, and any additional information provided by the parties through the exchange of questions and responses as provided in subsection G.1 above.

Based on an objective evaluation of the evidence, the decision-maker shall determine whether the preponderance of the evidence supports a finding that the respondent is responsible for sexual harassment in violation of board policy, and if so, what disciplinary sanction will be imposed. In addition to any disciplinary sanction, the decision-maker will determine whether any additional remedies will be provided to the complainant if the respondent is found responsible. Remedies must be designed to restore or preserve equal access to educational programs or activities or the workplace.

4. Step 4 – Written Determination Regarding Responsibility

The decision-maker shall issue a written determination regarding responsibility simultaneously to both parties that includes:

- a. identification of the allegations potentially constituting sexual harassment under board policy;
- b. a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- c. findings of fact supporting the determination;
- d. conclusions regarding the application of board policy and/or the Code of Student Conduct or expected standards of employee behavior to the facts;
- e. a statement of, and rationale for, the result as to each allegation, including

a determination regarding responsibility, any disciplinary sanctions imposed on the respondent (which may be a recommendation to the board for discipline that is beyond the authority of the superintendent or other decision-maker), and whether remedies designed to restore or preserve equal access to the school system's education program and activities will be provided to the complainant;

- f. the procedures and permissible bases for the complainant and respondent to appeal; and
- g. any other notices that are required to accompany the decision under state law, such as when the superintendent imposes a long-term suspension or recommends dismissal of a teacher.

#### **H. TITLE IX PROCESS FOR FORMAL COMPLAINTS: PART III – APPEAL**

The parties shall have the right to appeal to the board of education the determination regarding responsibility, the outcome of any disciplinary proceeding, and any dismissal of a formal complaint or any allegations therein. If a party appeals both the determination regarding responsibility and the outcome of a disciplinary proceeding, both matters will be heard by the board at the same time. If both parties appeal, the appeals will be heard at the same time.

##### **1. Deadline and Grounds for Appeal**

Either party may appeal by submitting a request in writing to the superintendent within three school business days of receiving the determination regarding responsibility, unless the party is entitled to a longer appeal period under state law or board policy. Any longer appeal period applicable to one party shall apply equally to the other party. The grounds for appeal may be any of the following:

- a. procedural irregularity that affected the outcome of the matter;
- b. new evidence that was not reasonably available at the time the formal complaint was dismissed or the determination by the decision-maker regarding responsibility was made, that could affect the outcome of the matter;
- c. the Title IX coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome of the matter, which must be stated with particularity in the written appeal;
- d. the disciplinary sanction is in violation of law, arbitrary or capricious, or unsupported by substantial evidence in view of the entire record as submitted. Substantial evidence refers to relevant evidence as a reasonable

mind might accept as adequate to support a conclusion; or

- e. any other basis provided by law or board policy governing appeals to the board.

## 2. Notice of the Appeal

In all appeals, the other party will be notified in writing when an appeal is filed and be provided a copy of the appeal.

## 3. Appeal Procedures

- a. The board will hear the appeal. Unless otherwise required by law, the board may designate a panel of two or more board members to hear and act on behalf of the board.
- b. Appeal procedures will be implemented equally for both parties and will follow any applicable procedures in policy or state law, modified as necessary to allow equal participation of the parties.
- c. After the notice of appeal is provided, both parties will be given 10 days to submit a written statement in support of, or challenging, the outcome. If the basis of the appeal is newly available evidence affecting the outcome, the party shall submit such evidence or a summary of such evidence along with the party's written statement.
- d. The decision-maker will compile the record of appeal for the board, including the statements and any material submitted by the parties. The decision-maker may include a statement by the decision-maker in response to the written statements or materials submitted by the parties. Any statement by the decision-maker that is submitted to the board shall also be provided to the parties.
- e. The board will review the record and the written statement of the parties submitted on appeal, determine whether additional information is needed from any party, and take any other steps that the board determines to be appropriate or that is required by state law in order to respond to the appeal.

## 4. Decision on Appeal

- a. After considering the record and written statements of the parties, the board will determine whether the grounds for the appeal have been substantiated.
- b. If substantiated, the board will determine the appropriate response, which may include a remand for a supplemental investigation, a modified decision, or both, or such other action as the board determines is necessary.

- c. The board will provide a written decision describing the results of the appeal and rationale for the result within thirty days after the record of appeal is submitted unless the decision is delayed for good cause. The written decision will be provided simultaneously to both parties.