



Independent School District No. 110
Waconia Public Schools

Title IX Sexual Harassment Grievance Process

Waconia Public Schools is committed to maintaining an education and work environment that is free from discrimination based on sex, including sexual harassment. The purpose of this grievance process is to provide for the prompt and equitable resolution of student and employee complaints based on sex discrimination, including complaints of sexual harassment or sexual violence, in violation of Title IX of the Education Amendments of 1972 ("Title IX"). Any complaints involving sexual harassment, as defined below, will be subject to this grievance process.

I. DEFINITIONS

- A. "Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to the school district's Title IX Coordinator or to any employee of the school district. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the school district with actual knowledge is the respondent.
- B. "Complainant" means a person who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX. A parent or guardian of a minor complainant, or a legal guardian of an adult complainant, may act on behalf of a complainant, including through the filing of a formal complaint.
- C. "Education program or activity" means locations, events, or circumstances for which the school district exercises substantial control over both the respondent and the context in which the sexual harassment occurs and includes school district education programs or activities that occur on or off of school district property.
- D. "Formal complaint" means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school district investigate the allegation of sexual harassment. A formal complaint filed by a complainant must be a physical document or an electronic submission. The formal complaint must contain the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint, and must be submitted to the Title IX Coordinator in person, by mail, or by email. A formal complaint shall state that, at the time of filing the formal complaint, the complainant was participating in, or attempting to participate in, an education program or activity of the school district with which the formal complaint is filed. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant.

- E. “Party” refers interchangeably to a complainant or respondent.
- F. “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- G. “Sexual harassment” means any of three types of misconduct on the basis of sex that occurs in a school district education program or activity and is committed against a person in the United States:
1. *Quid pro quo* harassment by a school district employee (conditioning the provision of an aid, benefit, or service of the school district on an individual's participation in unwelcome sexual conduct);
 2. Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; or
 3. Any instance of sexual assault (as defined in the Clery Act, 20 U.S.C. §1092(f)(6)A(v)), dating violence, domestic violence, or stalking (as defined in the Violence Against Women Act, 34 U.S.C. §12291).
- H. “Supportive measures” means individualized services provided to the complainant or respondent without fee or charge that are reasonably available, non-punitive, non-disciplinary, not unreasonably burdensome to the other party, and designed to ensure equal educational access, protect safety, and deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, alternative educational services as defined under Minn. Stat. § 121A.41, as amended, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the school district buildings or property, and other similar measures.
- I. “Title IX Coordinator” means an employee of the school district that coordinates the school district’s efforts to comply with and carry out its responsibilities under Title IX. The Title IX Coordinator is responsible for acting as the primary contact for the parties and ensuring that the parties are provided with all notices, evidence, reports, and written determinations to which they are entitled under this policy and grievance process. The Title IX Coordinator is also responsible for effective implementation of any supportive measures or remedies. The following individual is designated as the District 110 Title IX Coordinator:

**Sonya Sailer, Director of Human Resources
Waconia Public Schools
512 Industrial Boulevard
Waconia, Minnesota 55387
Telephone: (952) 442-0645
Email: TitleIXCoordinator@isd110.org**

Questions concerning Title IX may be referred to the Title IX Coordinator, the Assistant Secretary for Civil Rights of the United States Department of Education, or both. Complaints of sexual harassment under Title IX may be directed to the Title IX Coordinator for processing under this procedure. Complaints of discrimination under Title IX that are not sexual harassment complaints may be directed to the Title IX Coordinator, but will be processed under the appropriate policy and/or procedure.

II. BASIC REQUIREMENTS FOR GRIEVANCE PROCESS

- A. An employee with actual knowledge of sexual harassment must promptly notify the Title IX Coordinator of the sexual harassment. When the Title IX Coordinator receives a report, the Title IX Coordinator will promptly contact the complainant.
- B. The school district shall treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following this grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore and preserve access to the school district's education program or activity. Remedies may include disciplinary or punitive action against a respondent upon a determination of responsibility following the grievance process.
- C. There will be a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- D. The school district may not require the parties to participate in an informal resolution process.
- E. The Title IX Coordinator, Investigator, Decision-maker, and Appellate Decision-maker, shall be free from conflicts of interest or bias for or against complainants or respondents generally or a specific complainant or respondent.
- F. The Title IX Coordinator, Investigator, Decision-maker, Appellate Decision-maker, and any person who facilitates an informal resolution process will receive training as required by 34 C.F.R. § 106.45(b)(1)(iii).
- G. The burden of proof shall be on the school district using a preponderance of the evidence standard (i.e. whether it is more likely than not that the respondent engaged in sexual harassment).
- H. The school district may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, the waiver of the right to an investigation and adjudication of formal complaints of sexual harassment.
- I. All evidence will be objectively evaluated, inculpatory and exculpatory, and shall avoid credibility determinations based solely on a person's status as a complainant, respondent, or witness.

- J. The school district will not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- K. The school district will not impose any disciplinary sanctions or take any other actions against a respondent that do not constitute supportive measures until it has completed this grievance process and the respondent has been found responsible.
- L. Any student or employee who knowingly provides false statements or information in the course of a sexual harassment grievance process will be subject to discipline.

III. FILING A FORMAL COMPLAINT

- A. Any person (including the parent of a student) may report sex discrimination, including sexual harassment, in person, by mail, by telephone, or by e-mail using the Title IX Coordinator's contact information listed in section I(I) of this grievance process. Reports may be made at any time, including during non-business hours. A report does not automatically constitute a formal complaint of sexual harassment. Formal complaints of sexual harassment will be processed pursuant to this grievance process.
- B. Upon receipt of a report, the Title IX Coordinator shall promptly contact the complainant confidentially to discuss the availability of supportive measures and the complainant's wishes regarding such supportive measures, whether or not the complainant decides to file a formal complaint, and explain to the complainant the process for filing a formal complaint.

IV. NOTICE TO PARTIES

- A. Upon receipt of a formal complaint of sexual harassment as defined in section I(G), the Title IX Coordinator will provide written notice of the formal complaint to the known parties and include this grievance process. This written notice will contain: a) the allegations of sexual harassment, including sufficient details known at the time, the identities of the parties involved in the incident (if known), the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known; b) 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 grievance process; c) statement explaining that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney; d) statement that the parties may inspect and review evidence gathered pursuant to this policy; e) statement informing the parties of any code of conduct provision that prohibits knowingly making false statements or knowingly submitting false information. If during the course of the investigation the school district decides to investigate any allegations about the complainant or respondent that were not included in the written notice of a formal complaint provided to the parties, the school district must provide notice of the additional allegations to the known parties.

V. DISMISSAL OF A FORMAL COMPLAINT

- A. Under federal law, the school district must dismiss a Title IX complaint, or a portion

thereof, if the conduct alleged in a formal complaint or a portion thereof: a) would not meet the definition of sexual harassment, even if proven; b) did not occur in the school district's education program or activity; or c) did not occur against a person in the United States.

- B. The school district may, in its discretion, dismiss a formal complaint or allegations therein if: a) the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein; b) the respondent is no longer enrolled or employed by the school district; or c) specific circumstances prevent the school district from gathering sufficient evidence to reach a determination.
- C. The school district shall provide written notice of a dismissal simultaneously to both parties. The notice must include the reasons for the dismissal.
- D. Dismissal of a formal complaint or a portion thereof does not preclude the school district from addressing the underlying conduct in any manner that the school district deems appropriate.

VI. CONSOLIDATION OF COMPLAINTS

- A. The school district may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

VII. INFORMAL RESOLUTION PROCESS

- A. At any time prior to reaching a determination of responsibility, informal resolution may be offered and facilitated by the school district at the school district's discretion, but only after a formal complaint has been received by the school district.
- B. The school district may not require as a condition of enrollment or continued enrollment, or of employment or continued employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment.
- C. The informal resolution process may not be used to resolve allegations that a school district employee sexually harassed a student.
- D. The school district will not facilitate an informal resolution process without both parties' agreement, and will obtain their voluntary, written consent. The school district will provide to the parties a written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, the parties' right to withdraw from the informal resolution process, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

- E. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.
- F. Any informal resolution process must be completed within thirty (30) calendar days following the parties' agreement to participate in such informal resolution process.

VIII. INVESTIGATION PROCESS

- A. If a formal complaint is received by the school district, the Title IX Coordinator shall inform the superintendent, authorize an investigation, and assign an Investigator to investigate the allegations set forth in the formal complaint. The investigation may be assigned to a school district employee that has received Title IX training or to a third party designated by the school district.
- B. If during the course of the investigation the school district decides to investigate any allegations about the complainant or respondent that were not included in the written notice of a formal complaint provided to the parties, the school district must provide notice of the additional allegations to the known parties.
- C. When a party's participation is invited or expected in an investigative interview, the Investigator will coordinate with the Title IX Coordinator to provide written notice to the party of the date, time, location, participants, and purposes of the investigative interview with sufficient time for the party to prepare.
- D. During the investigation, the Investigator must provide the parties with an equal opportunity to present witnesses for interviews, including fact witnesses and expert witnesses, and other inculpatory and exculpatory evidence. The school district cannot restrict the ability of either party to discuss the allegations under investigation or to gather and present evidence.
- E. Prior to the completion of the investigative report, the Investigator, through the Title IX Coordinator, will provide the parties and their advisors (if any) with an equal opportunity to inspect and review any evidence directly related to the allegations. The evidence shall be provided in electronic format or hard copy and shall include all relevant evidence, evidence upon which the school district does not intend to rely in reaching a determination regarding responsibility, and any inculpatory or exculpatory evidence whether obtained from a party or another source. The parties will have ten (10) days to submit a written response, which the Investigator will consider prior to completion of the investigative report.
- F. The Investigator will prepare a written investigative report that fairly summarizes the relevant evidence. The investigative report may include credibility determinations that are not based on a person's status as a complainant, respondent or witness. The school district will send the parties and their advisors (if any) a copy of the report in electronic format or hard copy, for their review and written response at least ten (10) days prior to a determination of responsibility.

IX. DETERMINATION OF RESPONSIBILITY

- A. After the school district has sent the investigative report to both parties and before the school district has reached a determination regarding responsibility, the Decision-maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness.
- B. The Decision-maker must provide the relevant questions submitted by the parties to the other parties or witnesses to whom the questions are offered, and then provide each party with the answers, and allow for additional, limited follow-up questions from each party.
- C. The Decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant.
- D. When the exchange of questions and answers has concluded, the Decision-maker must issue a written determination regarding responsibility that applies the preponderance of the evidence standard to the facts and circumstances of the formal complaint. The written determination of responsibility must include the following:
 - 1. Identification of the allegations potentially constituting sexual harassment;
 - 2. 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, and methods used to gather other evidence;
 - 3. Findings of fact supporting the determination;
 - 4. Conclusions regarding the application of the school district's code of conduct to the facts;
 - 5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the school district imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the school district to the complainant; and
 - 6. The school district's procedures and permissible bases for the complainant and respondent to appeal and the date by which an appeal must be made.
- E. In determining appropriate disciplinary sanctions, the Decision-maker should consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved, and the context in which the alleged incident occurred.
- F. The written determination of responsibility must be provided to the parties simultaneously.

- G. The Title IX Coordinator is responsible for the effective implementation of any remedies.
- H. The determination regarding responsibility becomes final either on the date that the school district provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

X. APPEALS

- A. Parties to the complaint may appeal a determination regarding responsibility or the dismissal of a formal complaint or any allegations therein, on the following bases: a) a procedural irregularity that affected the outcome of the matter (e.g., a material deviation from established procedures); b) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and c) the Title IX Coordinator, Investigator, or Decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- B. An appeal of a determination of responsibility or of a decision dismissing a formal complaint must be received by the school district within five (5) calendar days of the date the determination of responsibility or dismissal was provided to the parties.
- C. If notice of an appeal is timely received by the school district, the school district will notify the parties in writing of the receipt of the appeal, assign or designate the Appellate Decision-maker, and give the parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
- D. After reviewing the parties' written statements, the Appellate Decision-maker will issue a written decision within thirty (30) calendar days of the day the appeal was received by the school district. The written decision will be provided simultaneously to the parties describing the result of the appeal and the rationale for the result. The decision of the Appellate Decision-maker is final. No further review beyond the appeal is permitted.

XI. SUPPORTIVE MEASURES

- A. There are various supportive measures available for both complainants and respondents. The Title IX Coordinator serves as the central reference for information about reporting and the investigative process, as well as available supportive measures as described in section I(H) of this grievance procedures and process. Student complainants and respondents may receive counseling and additional referrals from their school counselor or social worker. Employee complaints and respondents may access services through the school district's employee assistance program.

XII. INTERIM MEASURES

- A. The school district may remove a student-respondent from an education program or activity of the school district on an emergency basis before a determination regarding responsibility is made if: a) The school district undertakes an individualized safety and risk analysis; b) The school district determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal of the student-respondent; and c) The school district determines the student-respondent poses such a threat, it will so notify the student-respondent and the student-respondent will have an opportunity to challenge the decision immediately following the removal. In determining whether to impose emergency removal measures, the Title IX Coordinator shall consult related school district policies, including MSBA Model Policy 506 – Student Discipline. The school district must take into consideration applicable requirements of the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973, prior to removing a special education student or Section 504 student on an emergency basis.
- B. The school district may place a non-student employee on administrative leave during the pendency of the grievance process of a formal complaint. Such leave will typically be paid leave unless circumstances justify unpaid leave in compliance with legal requirements. The school district must take into consideration applicable requirements of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act prior to removing an individual with a qualifying disability.

XIII. NO RETALIATION

- A. Neither the school district nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX because the individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation.
- B. Complaints alleging retaliation may be filed with the Title IX Coordinator in accordance with this grievance process.
- C. The school district shall discipline or take appropriate action against any student or employee who engages in retaliation.

XIV. FALSE COMPLAINTS

- A. Individuals that knowingly file a false or misleading complaint or who knowingly provide false or misleading information during this grievance process may be subject

to appropriate disciplinary action.

XV. OTHER PROCEEDINGS

- A. Nothing in this grievance procedure and process shall be interpreted to preclude the school district from disciplining students or employees under other laws, policies, procedures and/or processes, and the procedures set forth herein may be pursued simultaneously and in conjunction with other discipline or grievance procedures.

XVI. CONCLUSION OF GRIEVANCE PROCESS

- A. The school district will seek to conclude the grievance process, including any appeal, within one hundred twenty (120) calendar days of the date the formal complaint was received by the school district.

XVII. DELAY OF GRIEVANCE PROCESS OR TIMELINES FOR CAUSE

- A. A temporary delay of this grievance process or the limited extension of the timeframes outlined herein is permitted for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

XVIII. RECORDKEEPING

- A. The school district must maintain the following documents for a period of seven (7) years: a) each sexual harassment investigation including any determination regarding responsibility and any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the school district's education program or activity; b) any appeal and the results therefrom; c) any informal resolution and the results therefrom; d) all materials used to train Title IX Coordinators, Investigators, Decision-makers; and any person who facilitates an informal resolution process; and e) records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the school district must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the school district's education program or activity. If the school district does not provide a complainant with supportive measures, then the school district must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the school district in the future from providing additional explanations or detailing additional measures taken.