

BERKELEY COUNTY SCHOOLS TITLE IX GRIEVANCE PROCEDURES

PURPOSE: The purpose of these procedures is to secure, at the lowest possible level, prompt and equitable resolutions of 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"), and violation of District policies that prohibit these types of discrimination. These procedures apply only to complaints alleging discrimination prohibited Title IX (including sexual harassment and sexual violence).

These procedures shall be available in every school site administrative office, posted on the District website, and included in student handbooks.

I. DEFINITIONS:

A. "Complainant" - A complainant is a student or employee of the District who submits a complaint alleging discriminatory action or treatment prohibited by Title IX, including acts of sexual harassment or sexual violence.

B. "Respondent" - the person, employees, other students, or third parties, alleged to be responsible for the prohibited conduct alleged in a complaint.

C. "Day" - The calculation of days in complaint processing, except as otherwise expressly provided, shall exclude Saturdays, Sundays, and federal, state and school holidays or closures.

D. "Title IX" of the Educational Amendments of 1972 - No person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Sex discrimination under Title IX includes sexual harassment and sexual violence.

E. "Sexual Harassment" – Conduct occurring between any persons, including members of the same sex, that:

1. is sexual in nature;
2. is unwelcome; and
3. denies or limits a student's ability to participate in or benefit from a school's education program.

Sexual Harassment may include acts of sexual violence. Sexual Harassment is a form of sex discrimination prohibited by Title IX.

F. "Sexual Violence" - Physical sexual acts occurring between any persons, including members of the same sex, perpetrated by against a person's will or where a person is incapable of giving consent (e.g., due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

G. "Complaint Submission Date" - the date on which a written complaint was received by the Responsible Administrator.

H. "Responsible Administrator" - The Title IX Coordinator, the authorized designee of this individual, or the administrator designated by the Superintendent, as appropriate.

I. "Neutral and objective investigator/administrator" - an administrator or designated investigator who is not the subject of a complaint or is not a Complainant.

II. PROCEDURAL REQUIREMENTS.

A. Time Limits. A complaint under this procedure should be filed as soon as possible after the time of occurrence and within 180 days of the alleged violation(s) of Title IX. Failure of a complainant or appellant to comply with any time limitation in the complaint procedure may result in dismissal of the complaint and/or denial of the appeal. Dismissal shall not preclude the individual's right to pursue the complaint through other appropriate external agencies. If a district representative fails to comply with any time limitation in the complaint procedure, the Complainant may immediately proceed to the next level permitted by these Procedures.

B. Service. Service of any notice or decision provided for under this procedure shall be deemed effective on the person served as of the date of delivery, if personally served, faxed or emailed, or effective three (3) calendar days of deposit by first class mail if delivered by mail.

C. Confidentiality.

- 1.** Confidentiality will be maintained to the greatest extent possible. Any information gathered during an informal procedure may be used during a formal procedure, if initiated. While there can be no assurance of complete confidentiality, complaints under this procedure will be treated as sensitive information not to be shared with others except in limited circumstances. Examples of exceptions to maintaining confidentiality include:
 - information the law requires to be reported.
 - information imparted to others in supervisory positions in order to further an investigation or halt a discriminatory practice.
 - information given to the respondent in order to have sufficient information to respond to the allegations.
- 2.** The District will take all reasonable steps to investigate and respond to a complaint consistent with a request by the complaining party not to disclose his/her name. However, such requests for confidentiality may limit the District's ability to adequately investigate and respond to the allegations raised in the complaint.
- 3.** Requests for confidentiality, therefore, will be evaluated in the context of the District's responsibility to provide a safe and nondiscriminatory environment for all students, and the request will be weighed against whatever factors the District deems relevant, including, without limitation:

- the complainant's age;
 - circumstances that suggest there is an increased risk of future acts of harassment and/or sexual violence under similar circumstances; and
 - whether the District possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).
4. All parties to a grievance, including the Complainant, Respondent and witnesses, have privacy interests and, therefore, all parties should be cautioned not to divulge or publicize the nature of the proceedings or the identity of those involved outside the scope of the investigation.

III. INFORMAL AND FORMAL PROCESSES.

A. INFORMAL RESOLUTION PROCESS:

Informal resolution may be an appropriate choice when the conduct involved is not of a serious or repetitive nature and disciplinary action is not required to remedy the situation. No formal investigation is involved in the informal resolution process, and the informal resolution process shall not be considered a precondition for the filing of a formal written complaint pursuant to Section III.B., below.

1. A written request for informal resolution must be made within ten (10) days of the date of the alleged incident. The school principal or designee shall determine whether the nature of the problem is such that it is likely to be resolved by agreement on an informal basis.
2. Methods for informal resolution may include, but are not limited to, coaching the person on how to directly address a situation which is causing a problem; mediating the dispute with the parties; developing written behavior expectations of the alleged offender to redirect conduct; assisting with the resolution of a real or perceived problem; or arranging a documented meeting with the alleged offender that involves a discussion of the sex discrimination and sexual harassment policies and requirements for compliance.
3. The principal or designee shall document any informal resolution, and a copy of such documentation shall be forwarded to the Title IX Coordinator within three (3) days of resolution.

B. FORMAL COMPLAINT PROCEDURES:

Initiation of the formal complaint procedures requires a written complaint. All written complaints regarding harassment or discrimination of students or employees in violation of Title IX shall be submitted to:

Elice Gregory, emgregor@k12.wv.us

Step 1 - Reporting Complaints.

(a) The Complainant may obtain a Complaint Form from the Title IX Coordinator, school principal, or the District website. A complaint form also may be copied from a student handbook. The Complainant may attach a written narrative explaining the nature of the complaint to the Form. The Complaint Form or narrative shall contain information that describes the conduct that has violated prohibitions against sex discrimination, including sexual harassment and sexual violence, and identify with reasonable particularity the respondent(s) and any witnesses to the alleged conduct.

(b) Any District employee who either reasonably believes a student has been discriminated against based on sex or who receives a complaint of sex discrimination, harassment or violence from a student must immediately submit the Complaint Form to the Responsible Administrator. This reporting obligation is in addition to a school employee's reporting obligations to appropriate officials pursuant to law and the District Child Abuse or Neglect Reporting Guidelines when the employee has a reasonable belief that a student is being sexually abused or subjected to other forms of abuse and neglect prohibited by law.

(c) If the Complainant is unwilling or unable to provide a written statement including the information set forth above, the Responsible Administrator shall ask for such details in an oral interview. In the event the Complainant is a student with disabilities, the Responsible Administrator will carefully review the reporting student's IEP or 504 plan to determine what specific accommodations that child should have to aid in their reporting.

Step 2 - Determining Applicability of the Procedures.

The Responsible Administrator shall initially review the written complaint to determine whether the matter falls within the scope of these procedures. Within five (5) days after the Complaint Submission Date, the Responsible Administrator shall initiate an investigation of the matters alleged, or inform the Complainant in writing that the matters alleged in the complaint are not within the jurisdiction or authority of the District to investigate and that the District will not carry out any further investigation. If the matter does not involve allegations of discrimination within the scope of these procedures, the Responsible Administrator shall forward the matter to the proper District administrative authority for review, if appropriate.

Step 3 - Investigation.

(a) The Responsible Administrator shall oversee that an adequate, reliable and impartial investigation of the complaint is conducted by the principal or designee of the school site where the student is enrolled, the employee is assigned, and/or where the alleged discrimination occurred.

(b) In order to provide a neutral and objective investigation, neither the Responsible Administrator, nor the principal or designee conducting the investigation shall be a party to the complaint in the investigation.

(c) In the event that the principal or his/her designee is not a neutral party, the Responsible Administrator shall designate a neutral and objective administrator to conduct the investigation. In the

event that the Responsible Administrator is not a neutral party, the Superintendent shall designate a neutral and objective administrator to oversee the investigation.

(d) In conducting the investigation, the designated investigator shall interview all parties identified in the complaint and other witnesses that the investigator determines may provide information relevant to resolving the complaint allegation(s). Both the Complainant and Respondent shall have the opportunity to identify witnesses to be interviewed and provide documentation or other evidence for the designated investigator to review.

(e) The Responsible Administrator shall consider the evidence compiled by the designated investigator and take whatever additional actions the Responsible Administrator deems necessary to complete the investigation.

(f) The Responsible Administrator will maintain documentation of all proceedings, which may include written findings of facts, transcripts, notes, or audio recordings.

Step 4 - Notice of Resolution.

(a) Notice. The Responsible Administrator shall notify both the Complainant and Respondent in writing within thirty (30) days from the Complaint Submission Date of the results of the investigation.

(b) Written Determination. The Responsible Administrator shall consider the totality of the evidence and determine whether the preponderance of the evidence establishes that the alleged discrimination occurred (i.e., it is more likely than not that discrimination/sexual harassment/sexual violence occurred).

(i) If the Responsible Administrator determines that the preponderance of the evidence does not support the allegations of discrimination, the Complainant may appeal the determination pursuant to Step 5, below.

(ii) If the Responsible Administrator determines that the preponderance of the evidence supports the allegations of discrimination by the Respondent, the Responsible Administrator shall provide written findings and conclusions supporting the determination. In addition, the written determination shall make recommendations for (A) immediately ending the discriminatory conduct; (B) ways to remedy the discriminatory effects of any discriminatory behavior on the complaining party and, if applicable, the District's educational environment, and (C) the steps to be taken to prevent the recurrence of any discriminatory or harassing conduct found to have occurred. The recommendations of the Responsible Administrator shall become final and shall be implemented unless either party appeals as provided in Step 5 - Appeal Rights.

Step 5 - Appeal Rights.

(a) A party not satisfied with the resolution in Step 4, above, may submit a written appeal within five (5) days to the Superintendent. The written appeal shall state with particularity the nature of the disagreement, the reasons underlying such disagreement, and how the outcome would be changed by reconsideration of the determination.

(b) The Superintendent or designee shall conduct a review of the record to determine whether the preponderance of the evidence supports the determination. The Superintendent or designee shall issue a written decision and mail it to the parties within ten (10) days of the receipt of the appeal. The Superintendent's decision is a final decision.

Step 6 - Complaints to an External Agency.

If a party is not satisfied with the Superintendent's decision in Step 5, above, the party may file a complaint with the Office of Civil Rights ("OCR") in Philadelphia, Pennsylvania. More information is available at the Philadelphia Office for Civil Rights, U.S. Department of Education, The Wanamaker Building, 100 Penn Square East, Suite 515, Philadelphia, PA 19107-3323.

IV. DISCIPLINE.

Employees and students may be disciplined if it is determined through this procedure that discriminatory action, treatment, harassment or retaliation for complaining, has occurred in violation of federal or state laws or District policies. The Responsible Administrator shall refer the matter to the appropriate District administrator to initiate disciplinary proceedings against the Respondent.

- A.** Students. If the recommended disciplinary consequences involve either a long-term suspension or expulsion, the student is entitled to pursue the hearing and appeal rights pursuant to West Virginia Policy 4373.
- B.** Employees. If the disciplinary consequence involves suspension or termination, the employee's hearing and appeal rights will be governed by West Virginia law and District policies.

V. NO RETALIATION.

- A.** Students, employees or parents who make complaints in good faith, shall be free from retaliation, coercion, and reprisal in seeking resolution of their complaint. Furthermore, persons acting as witnesses to a complaint, in good faith, shall be free from reprisal.
- B.** Retaliation is a separate violation distinct from the initial underlying harassment or discrimination allegation. Claims of retaliation, submitted in good faith and in writing to the Responsible Administrator, shall be investigated pursuant to these procedures. Individuals who engage in retaliation will be subject to discipline, regardless of whether there has been a finding of cause for the underlying complaint.

VI. FALSE COMPLAINTS.

- A.** Individuals who knowingly file a false or misleading complaint alleging harassment, discrimination or retaliation are subject to appropriate disciplinary action, including, but not limited to, dismissal of the complaint.
- B.** If the preponderance of the evidence supports a finding that the Complainant submitted a false or misleading complaint alleging harassment, discrimination or retaliation, the complaint will be dismissed, and the student or employee who submitted the complaint

will be recommended for discipline in a manner consistent with the District's Rights and Responsibilities Guide.

VII. RELATIONSHIP OF THESE PROCEDURES AND TIMELINES TO LAW ENFORCEMENT ACTIVITIES.

- A.** Nothing in these Procedures should in any way be deemed to discourage the Complainant from reporting acts subject to these Procedures, including acts of sexual violence, to local law enforcement. In the event that the Complainant files a criminal complaint, the Responsible Administrator should not wait for the conclusion of a criminal investigation or criminal proceeding to begin the District's own Title IX investigation.
- B.** Although the District may need to delay temporarily the fact-finding portion of a Title IX investigation while local law enforcement officials are gathering evidence, it is important for the Responsible Administrator to understand that during this brief delay in the Title IX investigation, the District must take interim measures to protect the Complainant in the educational setting. The District should also continue to update the parties on the status of the investigation and inform the parties when the District resumes its Title IX investigation

VIII. INTERIM MEASURES PENDING FINAL DETERMINATION OF THE COMPLAINT.

- A.** Title IX requires the District to take steps to ensure equal access to its education programs and activities and protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. The District should take these steps promptly once it has notice of a sexual harassment or sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. The Responsible Administrator should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow the complainant to change academic and extracurricular activities as appropriate. The Responsible Administrator should also ensure that the complainant is aware of his or her Title IX rights and any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to local law enforcement.
- B.** The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. The Responsible Administrator should consider a number of factors in determining what interim measures to take, including, for example, the specific need expressed by the complainant; the age of the students involved; the severity or pervasiveness of the allegations; any continuing effects on the complainant; whether the complainant and alleged perpetrator share the class, transportation, or extra-curricular activities; and whether other judicial measures have been taken to protect the complainant (e.g., civil protection orders).