

MEMORANDUM

To: Board of Trustees
Twin Falls School District 411
From: Eva Craner, Director of Public Relations
Re: Policy Updates
Date: Dec. 14, 2020

First Reading:

ISBA Updates:

- 3085P Title IX Sexual Harassment Grievance Procedure, Requirements, and Definitions – COMPLETE POLICY REPLACEMENT
- 3085F Sexual Misconduct Reporting Form for Students
- 3285 Relationship Abuse and Sexual Assault Prevention and Response
- 3290 Sexual Harassment and Intimidation of Students
- 4120 Uniform Grievance Procedure
- 4120F Uniform Grievance Form
- 5240 Sexual Harassment & Sexual Intimidation in the Workplace
- 5275 Adult Sexual Misconduct
- 5620 Safety Management Program and District Personnel
- 5800P Classified Employee Grievance
- 8605 Retention of District Records

Administrative Updates:

- 3340 Corrective Actions and Punishment

Twin Falls School District #411

3290F3085F

Harassment Sexual Misconduct Reporting Form for Students

School _____ Date _____

Student's Name _____

(If you feel uncomfortable leaving your name, you may submit an anonymous report, but please understand that an anonymous report will be much more difficult to investigate. We assure you that we'll use our best efforts to keep your report confidential.)

Who was responsible for the harassment or incident(s)? _____

Describe the incident(s): _____

Date(s), time(s), and place(s) the incident(s) occurred: _____

Were other individuals involved in the incident(s)? yes no

If so, name the individual(s) and explain their roles: _____

Did anyone witness the incident(s)? yes no

If so, name the witnesses: _____

Did you take any action in response to the incident? yes no

If yes, what action did you take? _____

Were there any prior incidents? yes no

If so, describe any prior incidents: _____

Signature of complainant _____

Signatures of parents/legal guardian _____

When This Process Will Be Used

The procedures outlined in this process apply only to qualifying allegations of Title IX sexual harassment involving members of the Twin Falls School District community, which include students, staff, administrators, and faculty members. A qualifying allegation must include all of the following elements:

1. The alleged conduct would constitute Title IX sexual harassment as defined below;
2. The conduct occurred in a District educational program or activity as defined below;
3. The respondent is a member of the District community as defined below;
4. The conduct occurred against a person in the United States; and
5. In cases where formal complaints are filed, at the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the District's education program or activity.

Allegations of sexual misconduct that do not meet the criteria above will be addressed through the applicable procedures outlined in Policy 3085, as determined by the Title IX Coordinators.

Collateral Misconduct

This procedure may be used to address collateral misconduct (e.g., vandalism, physical abuse of another, retaliation, etc.) arising from the investigation of, or occurring in conjunction with, reported conduct that meets the criteria of a qualifying allegation of Title IX sexual harassment as described above. For example, if a formal complaint is filed alleging that a qualifying allegation of Title IX sexual harassment and an act of vandalism occurred during the same incident, both allegations may be addressed using the procedures described below.

Terms Used for This process

“Advisor” means a person chosen by a party to accompany the party to meetings, interviews, or hearings related to this grievance process and to advise the party on the process.

“Appeal decision maker or panel” refers to those who have decision-making authority during the appeals phase of the District's formal grievance process.

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute Title IX sexual harassment, as defined below.

“Twin Falls School District community” means, for the purpose of this process, District students, staff, administrators, and faculty members.

“Education Program or Activity” means locations, events, or circumstances where the District exercises substantial control over both the respondent and the context in which the Title IX sexual harassment occurs. For example, this could include, but is not limited to, conduct that takes place within a District school or on property owned or controlled by the District, or at

~~District-sponsored events.~~

~~“Formal complaint” means a document submitted by a complainant or their parent/guardian or signed by the Title IX Coordinators alleging Policy 3085 and requesting that the District investigate.~~

~~“Formal grievance process” is the method of formal resolution used to determine whether a qualifying allegation of Title IX sexual harassment as described above violates Policy 3085. The formal grievance process is used in a manner that complies with the requirements of the 34 CFR §106.45.~~

~~“Decision maker or panel” refers to those who have decision-making and sanctioning authority within the District’s formal grievance process.~~

~~“Investigator” means the person or persons assigned by the District to gather facts during the formal grievance process assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report.~~

~~“Notice” means that any District employee, including the Title IX Coordinators, is made aware of conduct that may constitute a violation of Policy 3085.~~

~~“Parties” include the complainant(s) and respondent(s), collectively.~~

~~“Remedies” are applied to the complainant and/or the District community, following a resolution, to address safety, prevent recurrence, and restore access to the District’s educational program.~~

~~“Respondent” means someone who has been reported as having engaged in conduct that could constitute Title IX sexual harassment, as defined below.~~

~~“Sanction” means a consequence imposed by the District on a respondent who is found to have violated Policy 3085 subsequent to engaging in the formal grievance process.~~

~~“Title IX Coordinators” is the official(s) designated by the District to ensure compliance with Title IX and the District’s Title IX program. References to the Title IX Coordinators throughout this document may also include a designee of the Title IX Coordinators for specific tasks.~~

~~References to the complainant, respondent, or to the parties collectively throughout these procedures may also include their parent(s)/guardian(s) when applicable.~~

Definition of Title IX Sexual Harassment

~~Title IX sexual harassment, as an umbrella category, includes the actual or attempted offenses of quid pro quo harassment, sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:~~

Conduct on the basis of sex or that is sexual that satisfies one or more of the following criteria:

1. ~~Quid pro quo harassment: An employee of the Twin Falls School District conditions, explicitly or implicitly, the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct.~~
2. ~~Sexual harassment: Unwelcome conduct determined by a reasonable person to be so severe and pervasive and objectively offensive that it effectively denies a person equal access to the District's Education Program or Activity.~~

~~Unwelcomeness, severity, pervasiveness, and objective offensiveness shall be determined as described in the U.S. Equal Employment Opportunity Commission's Policy Guidance on Current Issues of Sexual Harassment.~~

3. ~~Sexual assault: Sexual assault shall mean forcible and non-forcible sex offenses as defined in the Clery Act, or dating violence, domestic violence, stalking as defined in the Violence Against Women Act (VAWA).~~

~~Acts of Title IX sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.~~

Definitions of Force, Coercion, Consent, and Incapacitation

~~As used in the definitions referenced for the offenses listed above, the following definitions and understandings apply:~~

~~Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.~~

~~Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.~~

~~Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.~~

~~Consent is knowing, voluntary, and clear permission by word or action to engage in sexual activity. Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the~~

activity. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent to reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn in the middle of a sexual act, that sexual activity should stop immediately. If consent is withdrawn while the other party is not present, the activity shall cease as soon as is practicable.

Consent to some sexual contact, such as kissing or fondling, does not imply there is consent for other sexual activity, such as intercourse. A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the District to determine whether policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. It is a violation of policy if a respondent engages in sexual activity with someone who is incapable of giving consent.

It is a defense to a District policy violation that the respondent neither knew nor should have known the complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. Incapacitation also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

Retaliation

~~The Twin Falls School District and any member of the District community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Policy 3085 or its associated grievance processes.~~

~~Acts of alleged retaliation should be reported immediately to the Title IX Coordinators and will be promptly investigated either as collateral misconduct under this process or, as determined by the Title IX Coordinators, through the applicable procedures outlined in Policy 3085. The District will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.~~

~~Filing a complaint under another District policy or procedure related to the incident could be considered retaliatory if those charges are made for the purpose of interfering with or circumventing any right or privilege provided under this process that is not provided under the other District policy/procedure that was used. Therefore, the District vets all complaints carefully to ensure this does not happen, and to assure that complaints are tracked to the appropriate process.~~

~~The exercise of rights protected under the First Amendment does not constitute retaliation. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of this grievance process does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.~~

Supportive Measures

~~Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties. Supportive measures are designed to restore or preserve access to the District's Education Program or Activity, including measures designed to protect the safety of all parties or the District's educational environment, and/or deter Title IX sexual harassment.~~

~~The Title IX Coordinators shall promptly make supportive measures available to the complainant upon receiving notice or a formal complaint alleging they were the victim of Title IX sexual harassment, and to the respondent upon receipt of a formal complaint alleging that they engaged in Title IX sexual harassment in violation of Policy 3085. At the time that supportive measures are offered, the District will inform the complainant, in writing, that they may file a formal complaint with the District either at that time or in the future, if they have not done so already.~~

~~The Title IX Coordinators work with the complainant and/or their parent/guardian to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented.~~

~~The District shall maintain the privacy of the supportive measures so long as the privacy does not impair the District's ability to provide the supportive measures. The District shall reduce the academic or occupational impact on the parties as much as possible and shall implement measures in a way that does not unreasonably burden the other party.~~

~~Examples of supportive measures may include, but are not limited to:~~

- ~~1. Referral to counseling, medical, and/or other healthcare services;~~
- ~~2. Referral to the Employee Assistance Program;~~
- ~~3. Referral to community based service providers;~~
- ~~4. Visa and immigration assistance;~~
- ~~5. Education of the school community or community subgroup(s);~~
- ~~6. Altering work arrangements for employees;~~
- ~~7. Safety planning;~~
- ~~8. Providing school safety escorts;~~
- ~~9. Providing transportation accommodations;~~
- ~~10. Implementing contact limitations, such as no contact orders, between the parties;~~
- ~~11. Academic support, extensions of deadlines, or other course or program related adjustments;~~
- ~~12. Emergency warnings;~~
- ~~13. Class schedule modifications, withdrawals, or leaves of absence;~~
- ~~14. Increased security and monitoring of certain areas of the school; and~~
- ~~15. Any other actions deemed appropriate by the Title IX Coordinators.~~

~~Allegations of violations of no contact orders will be investigated either as collateral misconduct under this process or through the applicable procedures outlined in Policy 3085, as determined by the Title IX Coordinators.~~

Emergency Removal

~~The District can act to remove a student respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.~~

~~This risk analysis is performed by the Title IX Coordinators in conjunction with the District/School threat assessment team. In cases when an emergency removal involves a student with a disability who is receiving services under an Individualized Education Program (IEP), this risk analysis will also be performed in conjunction with the student's IEP Team and may present the need for a manifestation determination.~~

~~In all cases in which an emergency removal is imposed, the student respondent and their parent/guardian will be given notice of the action and the option to request to meet with the Title IX Coordinators prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to demonstrate why the action/removal should not be implemented or should be modified.~~

~~This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. A student respondent may be accompanied by an advisor of their choice during the meeting. The student respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation. A complainant and their advisor may be permitted to participate in this meeting if the Title IX Coordinators determine it is equitable to do so.~~

~~When this meeting is not requested, objections to the emergency removal will be deemed waived, except as described below.~~

~~In cases when an emergency removal involves a student with a disability who is receiving services under an IEP, this meeting can serve as the student's manifestation determination hearing and will be conducted in accordance with the requirements of the Individuals with Disabilities Education Act (IDEA). The student will not have to request such a meeting as it will be scheduled and held within ten days of the decision to implement the emergency removal. If it is determined that an emergency removal is necessary for more than ten school days, the removal would constitute a change in placement and shall be addressed in accordance with the requirements of the IDEA. The results of the manifestation determination may be appealed in accordance with the requirements under the IDEA.~~

~~This section also applies to any restrictions that a coach or athletic administrator may place on a student athlete arising from allegations related to Title IX sexual harassment. There is no appeal process for emergency removal decisions.~~

~~The Title IX Coordinators shall have sole discretion under this process to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal shall be grounds for discipline, which may include expulsion.~~

~~The District will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinators these actions could include, but are not limited to:~~

- ~~1. Temporarily re-assigning an employee;~~
- ~~2. Restricting a student's or employee's access to or use of facilities or equipment;~~
- ~~3. Changing transportation arrangements;~~
- ~~4. Authorizing an administrative leave;~~
- ~~5. Suspending a student's participation in extracurricular activities, student organizational leadership, or athletics; and~~
- ~~6. Any other actions deemed appropriate by the Title IX Coordinators~~

~~At the discretion of the Title IX Coordinators, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.~~

~~Where the respondent is an employee, existing provisions for interim action are applicable.~~

Promptness

~~All allegations of Title IX sexual harassment, whether by notice or formal complaint, shall be acted upon promptly. Formal complaints that are addressed through this process typically do not take in excess of 60 calendar days to resolve. There may be exceptions and extenuating circumstances that cause a resolution to take longer, but the District will avoid all undue delays within its control.~~

~~If the timeframes for resolution outlined in these procedures will be delayed, the District shall provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.~~

Privacy

~~The District shall make every effort to preserve the privacy of reports of Title IX sexual harassment.~~

~~“Privacy” means that information related to notice or a formal complaint will only be shared with the parties, their advisors, and a limited number of District employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the District’s Title IX sexual harassment response under this process shall receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA), as outlined in the District’s policies and procedures on student records. The privacy of employee records will be protected in accordance with District policies regarding personnel records.~~

~~The District shall not share the identity of any individual who has made a report or formal complaint of Title IX sexual harassment, any complainant, any respondent, or any witness, except as permitted by the 20 U.S.C. 1232g or 34 CFR part 99 or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these procedures.~~

~~The District reserves the right to determine which District officials have a legitimate educational interest in information about incidents that fall within this process, pursuant to FERPA.~~

Time Limits on Reporting

There is no time limit on providing notice or formal complaints to the Title IX Coordinators. However, if the respondent is no longer subject to the District's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/formal complaints significantly impacted by the passage of time shall be at the discretion of the Title IX Coordinators, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

Online Harassment

Policy 3085 and these procedures are written and interpreted to include online manifestations of any of the conduct prohibited above, when the conduct occurs in the District's Education Program and Activities or uses the District's networks, technology, or equipment.

When a Complainant Does Not Wish To Proceed

If a complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinators, who shall evaluate that request in light of the duty to ensure the safety of the Twin Falls School District community and to comply with state or federal law.

The Title IX Coordinators shall have ultimate discretion over whether the District proceeds when the complainant does not wish to do so, and the Title IX Coordinators may sign a formal complaint to initiate the applicable grievance process. Any decision to proceed should be due to a compelling risk to health and/or safety that requires the District to pursue formal action to protect the District community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The District may be compelled to act on alleged employee misconduct irrespective of a complainant's wishes. The Title IX Coordinators shall also consider the effect that non-participation by the complainant may have on the availability of evidence and the District's ability to pursue a grievance process fairly and effectively.

When the Title IX Coordinators sign the formal complaint, they do not become the complainant. The complainant is the individual who is alleged to have experienced conduct that may constitute Title IX sexual harassment.

When the District proceeds, the complainant (or their advisor) may have as much or as little involvement in the process as they wish. The complainant retains all rights of a complainant under this process irrespective of their level of participation. Typically, when the complainant chooses not to participate, the advisor or the complainant's parent/guardian may be appointed as

proxy for the complainant throughout the process, acting to ensure and protect the rights of the complainant, though this does not extend to the provision of evidence or testimony except in situations where a complainant is unable to provide evidence or testimony without assistance (e.g. due to age, disability, etc.).

The District's ability to remedy and respond to notice of Title IX sexual harassment may be limited if the complainant does not want the District to proceed with an investigation and/or grievance process. The goal is to provide the complainant with as much control over the process as possible, while balancing the District's obligation to protect its community.

In cases in which the complainant requests no formal action and the circumstances allow the District to honor that request, the District shall offer informal resolution options as described below, supportive measures, and remedies to the complainant, but will not otherwise pursue the formal grievance process.

If the complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a complainant has the right, and can expect, to have allegations taken seriously by the District, and to have the incident investigated and properly resolved through the applicable procedures, as determined by the Title IX Coordinators, as outlined in Policy 3085. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

False Allegations and Evidence

Deliberately false and/or malicious accusations are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination. Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under District policy.

Resolution Processes for Qualifying Allegations of Title IX Sexual Harassment

Upon receiving a formal complaint or notice pertaining to a qualifying allegation of Title IX sexual harassment, the Title IX Coordinators initiates a prompt initial assessment. The Title IX Coordinators will initiate at least one of the following responses:

1. Offering and/or implementing only supportive measures because the complainant does not want to file a formal complaint.
2. An informal resolution process upon submission of a formal complaint; and/or
3. A formal grievance, upon submission of a formal complaint, including an investigation and a determination of whether Policy 3085 was violated.

The District shall use the formal grievance process as detailed by the procedures below to determine whether or not a qualifying allegation of Title IX sexual harassment violates Policy 3085. If so, the District will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to Title IX sexual harassment, its potential recurrence, or its effects.

Initial Assessment

The Title IX Coordinators' initial assessment typically occurs within one to three school days. The steps in an initial assessment can include:

1. If notice is given, the Title IX Coordinators seek to determine whether the complainant wishes to make a formal complaint and will assist them in doing so, if desired. If the complainant does not wish to make a formal complaint, the Title IX Coordinators determine whether to initiate a formal complaint due to a compelling threat to health and/or safety.
2. If a formal complaint is received, the Title IX Coordinators assess its sufficiency and works with the complainant to make sure it is correctly completed.
3. The Title IX Coordinators reach out to the complainant to offer supportive measures.
4. The Title IX Coordinators work with the complainant to ensure they are aware of the right to have an Advisor.
5. The Title IX Coordinators work with the complainant to determine whether the complainant prefers a supportive measures only response, an informal resolution process, or a formal grievance process.
 - A. If a supportive measures only response is preferred, the Title IX Coordinators work with the complainant to identify their wishes, assesses the request, and implement the measures accordingly. No formal grievance process is initiated, though the complainant can elect to initiate one later, if desired.
 - B. If an informal resolution process is preferred, the Title IX Coordinators assess whether the complaint is suitable for informal resolution and may seek to determine whether the respondent is also willing to engage in informal resolution.
 - C. If a formal grievance process is preferred, the Title IX Coordinators determine whether the conduct alleged constitutes a qualifying allegation of Title IX sexual harassment:
 - I. If it does, the Title IX Coordinators will initiate the formal grievance process.
 - II. If it does not, the Title IX Coordinators will "dismiss" the complaint under this process and may address the allegation(s) using the applicable

~~grievance process as outlined in Policy 3085. Dismissing a complaint under this process is solely a procedural requirement under Title IX and does not limit the District's authority to address a formal complaint through a different applicable process.~~

Dismissal – Mandatory and Discretionary

~~The District must dismiss a formal complaint or any allegations therein if, at any time during the investigation or meeting with the Decision maker or panel, it is determined that the conduct alleged in the formal complaint would not constitute a qualifying allegation of Title IX sexual harassment as defined above, even if proved.~~

~~The District may dismiss a formal complaint or any allegations therein if, at any time during the investigation or meeting with the Decision maker:~~

- ~~1. A complainant notifies the Title IX Coordinators in writing that the complainant would like to withdraw the formal complaint in whole or in part; or~~
- ~~2. The respondent is no longer enrolled in or employed by the District; or~~
- ~~3. Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.~~

~~Upon any dismissal, the District will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. This dismissal decision is appealable by any party under the appeal procedures below.~~

Counterclaims

~~The District shall ensure that the grievance process is not abused for retaliatory purposes. The District permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.~~

~~Counterclaims determined to have been reported in good faith will be processed using the applicable procedure, as determined by the Title IX Coordinators. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.~~

~~Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinators. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of Policy 3085.~~

Statement of the Rights of the Parties

~~Any parties, as defined in this procedure, has the following rights:~~

1. ~~The right to an equitable investigation and resolution of all credible allegations of Title IX sexual harassment made in good faith to District officials.~~
2. ~~The right to timely written notice of all alleged violations, including the identity of the parties involved, if known; the precise misconduct being alleged; the date and location of the alleged misconduct, if known; the implicated policies and procedures; and possible sanctions.~~
3. ~~The right to timely written notice of any material adjustments to the allegations; such as additional incidents or allegations, additional complainants, or unsubstantiated allegations; and any attendant adjustments needed to clarify potentially implicated policy violations.~~
4. ~~The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.~~
5. ~~The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.~~
6. ~~The right to be treated with respect by District officials.~~
7. ~~The right to have District policies and procedures followed without material deviation.~~
8. ~~The right not to be pressured to informally resolve any reported misconduct involving violence, including sexual violence.~~
9. ~~The right not to be discouraged by District officials from reporting Title IX sexual harassment to both District and local authorities.~~
10. ~~The right to have allegations of violations of Policy 3085 responded to promptly and with sensitivity by law enforcement and District officials.~~
11. ~~The right to be informed of available supportive measures, both in the District and in the community.~~
12. ~~The right to a District implemented no contact order when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.~~
13. ~~The right to be informed of available assistance in changing academic and/or working situations after an alleged incident of Title IX sexual harassment, if such changes are reasonably available. No formal complaint or investigation, either District or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:~~
 - A. ~~Changing an employee's work environment, such as changing their reporting structure or office or workspace relocation;~~

- B. ~~Transportation accommodations;~~
 - C. ~~Visa or immigration assistance;~~
 - D. ~~Exam, paper, and/or assignment rescheduling or adjustment;~~
 - E. ~~Transferring classes;~~
 - F. ~~Temporary leave of absence;~~
 - G. ~~School safety escorts;~~
 - H. ~~Alternative course completion options.~~
14. ~~The right to have the District maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the District's ability to provide the supportive measures.~~
 15. ~~The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.~~
 16. ~~The right to ask the investigator(s) and decision maker(s) to identify and question relevant witnesses, including expert witnesses.~~
 17. ~~The right to provide the investigator(s)/decision maker(s) with a list of questions that, if deemed relevant by the investigator(s)/Chair, may be asked of any party or witness.~~
 18. ~~The right not to have irrelevant prior sexual history or character admitted as evidence.~~
 19. ~~The right to know the relevant and directly related evidence obtained and to respond to that evidence.~~
 20. ~~The right to a fair opportunity to provide the investigator(s) with their account of the alleged misconduct.~~
 21. ~~The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law and the right to have at least ten school days to review the report prior to any determination being made.~~
 22. ~~The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report.~~
 23. ~~The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.~~
 24. ~~The right to regular updates on the status of the investigation and/or resolution.~~
 25. ~~The right to have reports of alleged policy violations addressed by investigators, Title IX Coordinators, and decision maker(s) who have received relevant training.~~

26. ~~The right to preservation of privacy, to the extent possible and permitted by law.~~
27. ~~The right to meetings, interviews, and/or hearings that are closed to the public.~~
28. ~~The right to petition that any District representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.~~
29. ~~The right to have an advisor of their choice to accompany and assist the party in all meetings, interviews, and/or hearings associated with the resolution process.~~
30. ~~The right to the use of the appropriate standard of evidence, clear and convincing evidence, to make a finding after an objective evaluation of all relevant evidence.~~
31. ~~The right to have an impact statement considered by the Decision maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.~~
32. ~~The right to be promptly informed in a written notice of outcome letter of the finding(s) and sanction(s) of the formal grievance process and a detailed rationale of the decision, including an explanation of how credibility was assessed, delivered simultaneously— meaning without undue delay—to the parties.~~
33. ~~The right to be informed in writing of when a decision by the District is considered final and any changes to the sanction(s) that occur before the decision is finalized.~~
34. ~~The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the formal grievance process, and the procedures for doing so in accordance with the standards for appeal established by the District.~~
35. ~~The right to a fundamentally fair resolution as defined in these procedures.~~

Right to an Advisor

~~The parties may each have an advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. This could include an attorney, advocate, or support person. The parties may select whoever they wish to serve as their advisor as long as the advisor is eligible and available. “Available” means the party cannot insist on an advisor who simply does not have inclination, time, or availability. Also, the advisor cannot have conflicting roles, (such as being a Title IX administrator, who has an active role in the matter), or a supervisor, who must monitor and implement sanctions.~~

~~For students, this advisor can be someone in addition to their parent/guardian who may also be present with them for all meetings, interviews, and hearings within the resolution process.~~

Who Can Serve as an Advisor

The advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose advisors from inside or outside of the Twin Falls School District community.

Parties also have the right to choose not to have an advisor during the resolution process.

Advisor's Role in Meetings and Interviews

The parties may be accompanied by their advisor in all meetings, interviews, and hearings at which the party is entitled to be present, including intake and investigation interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The District cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not or cannot afford an attorney, the District is not obligated to provide an attorney.

Advisors or attorneys are permitted to fully represent their advisees or clients in resolution proceedings, including all meetings, interviews, and hearings. Although the District prefers to hear from parties directly, in these cases, parties are entitled to have evidence provided by their chosen representatives.

Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews, meetings, or hearings in advance of these interviews or meetings. This pre-meeting allows advisors to clarify and understand their role and the District's policies and procedures.

Advisor Violations of District Policy

All advisors shall be subject to the same District policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings or meetings. Advisors shall not address District officials in a meeting or interview unless invited to. For example, they should not ask procedural questions unless invited to. The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the investigator(s) or other decision-maker(s), unless so permitted by the provisions of state law or this policy.] In situations where the conduct at issue may also be a violation of criminal law, a legal Advisor may direct their client to refrain from answering a question(s) due to 5th Amendment Constitutional Right associated with self-incrimination. In such circumstance, no inferences should be drawn from this action by an accused person.

~~The parties are expected to ask and respond to questions on their own behalf throughout the resolution process. In cases where a party requires assistance in asking and/or responding to questions on their own behalf, (for example, due to age or disability), the advisor shall be allowed to ask and/or respond to questions on behalf of their advisee, at the discretion of the investigator(s) or decision maker(s). Although the advisor generally may not speak on behalf of their advisee, the advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their advisors should ask for breaks to allow for private consultation.~~

~~Any advisor who oversteps their role as defined by this process shall be warned only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinators shall determine how to address the advisor's non-compliance and future role.~~

Sharing Information with the Advisor

~~The District expects that the parties may wish to have the District share documentation and evidence related to the allegations with their advisors. Parties may share this information directly with their advisor or other individuals, if they wish. Doing so may help the parties participate more meaningfully in the resolution process.~~

~~The District shall also provide a consent form, which authorizes the District to share such information directly with the party's advisor. The parties must submit this completed form to the Title IX Coordinators or provide similar documentation demonstrating consent to a release of information to the advisor before the District is able to share records with an advisor.~~

Privacy of Records Shared with Advisor

~~Advisors are expected to maintain the privacy of the records shared with them. Advisors may not share these records with third parties, disclose them publicly, or use them for purposes not explicitly authorized by the District. The District may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the District's privacy expectations.~~

~~Advisors who are also District staff members may also be subject to more stringent confidentiality law, administrative rules, and policies.~~

Expectations of an Advisor

~~The District generally expects an advisor to adjust their schedule to ensure attendance at resolution process meetings when planned but may change scheduled meetings to accommodate an advisor's inability to attend, if doing so does not cause an unreasonable delay.~~

~~The District may also make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.~~

Expectations of the Parties with Respect to Advisors

~~A party may elect to change advisors during the resolution process and is not obligated to use the same advisor throughout. The parties are expected to inform the investigator(s) and decision-maker(s) of the identity of their advisor at least two school days before the date of their first meeting with investigators and decision makers, or as soon as possible if a more expeditious meeting is necessary or desired.~~

~~If a party changes advisors, consent to share information with the previous advisor is terminated, and a release for the new advisor must be secured before documentation and evidence related to the investigation will be provided to them.~~

Resolution Process

~~Resolution processes are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with District policy. Although there is an expectation of privacy around what investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to an informal resolution, if applicable, and as discussed below. The District encourages parties to discuss any sharing of information with their advisors before doing so.~~

Informal Resolution Process

~~An informal resolution process can include the following different approaches:~~

- ~~1. The Title IX Coordinators resolves the matter informally by providing supportive measures only to remedy the situation.~~
- ~~2. The parties agree to resolve the matter through an alternate resolution mechanism as described below, including mediation, restorative practices, and/or other, usually before a formal grievance process takes place.~~
- ~~3. The respondent accepts responsibility for violating Policy 3085 and desires to accept a sanction and end the resolution process. This usually occurs after the investigation phase of the formal grievance process.~~
- ~~4. The Title IX Coordinators negotiate a resolution that is satisfactory to the parties and the District.~~

~~To initiate the informal resolution process, a complainant must first submit a formal complaint. A respondent who wishes to initiate the informal resolution process should contact the Title IX Coordinators.~~

~~It is not necessary to pursue informal resolution first in order to engage in the formal grievance process. Any party participating in the informal resolution process can stop the process at any time and begin or resume the formal grievance process.~~

~~Prior to implementing the informal resolution process, the District shall provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the District.~~

~~The District shall obtain voluntary, written confirmation that all parties wish to resolve the matter through an informal resolution process before proceeding and shall not pressure the parties to participate in informal resolution.~~

~~Informal resolution shall not be used to resolve allegations or complaints where the complainant is a student and the respondent is an employee.~~

Alternate Resolution Mechanisms

~~An alternate resolution is an informal mechanism, including mediation or restorative practices, by which the parties mutually agree to resolve an allegation. All parties must consent to the use of an alternate resolution mechanism.~~

~~The Title IX Coordinators may consider the following factors to assess whether alternate resolution is appropriate, or which form of alternate resolution may be most successful for the parties:~~

- ~~1. The parties' preference for alternate resolution;~~
- ~~2. The likelihood of a potential resolution, considering any power dynamics between the parties;~~
- ~~3. The parties' motivation to participate;~~
- ~~4. The civility of the parties;~~
- ~~5. The disciplinary history of the parties;~~
- ~~6. Whether an emergency removal is needed;~~
- ~~7. The skill of the alternate resolution facilitator with this type of allegation;~~
- ~~8. The complexity of the complaint;~~
- ~~9. The capacity of the parties to understand and fully participate in the process;~~
- ~~10. The goals of the parties; and~~
- ~~11. Adequate resources to invest in alternate resolution, such as time and staff.~~

~~The ultimate determination of whether an alternate resolution is available or successful shall be made by the Title IX Coordinators. The Title IX Coordinators shall maintain records of any resolution that is reached. Failure to abide by the resolution agreement may result in appropriate disciplinary actions. The results of complaints resolved by an alternate resolution are not appealable.~~

Respondent Accepts Responsibility for Alleged Violations

The respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal grievance process will be paused, and the Title IX Coordinators will determine whether informal resolution can be used according to the criteria above. If so, the Title IX Coordinators shall determine whether all parties and the District are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinators shall implement the accepted finding that the respondent is in violation of Policy 3085 and implement agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written agreement to the terms of resolution. If the parties cannot agree on all terms of resolution, the formal grievance process shall resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanctions shall be promptly implemented in order to effectively stop the Title IX sexual harassment, prevent its recurrence, and remedy its effects.}]

Negotiated Resolution

The Title IX Coordinators may, with the consent of the parties, negotiate and implement an agreement to resolve the allegations that satisfies all parties and the District. Negotiated resolutions are not appealable.

Formal Grievance Process

The formal grievance process described below is the method of formal resolution used to determine whether a qualifying allegation of Title IX sexual harassment violates Policy 3085, as determined by an investigation and determination of responsibility made by a decision-maker. The formal grievance process shall be used in a manner that complies with the requirements of 34 CFR §106.45.

Grievance Process Pool

The formal grievance process relies on a pool of personnel (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of Policy 3085 to all students, parents/guardians of students, employees, prospective students, and prospective employees.

The list of Pool members and a description of the Pool can be found on the District’s website.

Pool Member Roles

Members of the Pool are trained and can serve in any the following roles, at the direction of the Title IX Coordinators:

1. To provide appropriate intake of and initial guidance pertaining to formal complaints;
2. To act as an advisor to the parties;
3. To serve in a facilitation role in alternate resolution if appropriately trained in appropriate resolution modalities;
4. To perform or assist with initial assessment;
5. To investigate complaints;
6. To serve as a meeting and/or hearing facilitator as a process administrator with no decision-making role;
7. To serve as a decision maker regarding the formal complaint; and
8. To serve as an appeal decision maker.

Pool Member Training

The Pool members receive training jointly. This training includes, but is not limited to:

1. The scope of the District's Title IX sexual harassment policies and procedures;
2. How to conduct investigations, meetings, and hearings in a manner that protects the safety of complainants and respondents and promotes accountability;
3. Reporting, confidentiality, and privacy requirements;
4. How to implement appropriate and situation-specific remedies;
5. How to investigate in a thorough, reliable, and impartial manner;
6. How to uphold fairness, equity, and due process;
7. How to weigh evidence;
8. How to conduct questioning;
9. How to assess credibility;
10. Impartiality and objectivity;
11. How to render findings and generate clear, concise, evidence-based rationales;
12. The definitions of all offenses;
13. How to apply definitions used by the District with respect to consent or the absence of consent consistently, impartially, and in accordance with District policies and procedures;
14. How to conduct an investigation and grievance process including meetings, hearings, appeals, and informal resolution processes;
15. How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
16. Any technology to be used during an interview, meeting, or hearing;
17. Issues of relevance of questions and evidence;
18. Issues of relevance to create an investigation report that fairly summarizes relevant evidence; and
19. How to determine appropriate sanctions in reference to Title IX sexual harassment.

Specific training is also provided for intake personnel. The materials used to train all members of the Pool are publicly posted here: <https://www.tfsd.org/departments/title-ix/>.

Notice of Investigation and Allegations

~~The Title IX Coordinators will provide written Notice of the Investigation and Allegations (NOIA) to the respondent upon commencement of the formal grievance process. This facilitates the respondent's ability to prepare for the interview and to identify and choose an advisor to accompany them. A copy of the NOIA shall also be provided to the complainant, who shall be given advance notice of when the NOIA will be delivered to the respondent.~~

~~The NOIA will include:~~

- ~~1. A meaningful summary of all of allegations;~~
- ~~2. The identity of the involved parties, if known;~~
- ~~3. The precise misconduct being alleged;~~
- ~~4. The date and location of the alleged incident(s), if known;~~
- ~~5. The specific policies implicated;~~
- ~~6. A description of the applicable procedures;~~
- ~~7. A statement of the potential sanctions that could result;~~
- ~~8. A statement that the District presumes the respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination;~~
- ~~9. A statement that determinations of responsibility are made at the conclusion of the formal grievance process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period;~~
- ~~10. A statement about the District's policy on retaliation;~~
- ~~11. Information about the privacy of the process;~~
- ~~12. Information on the need for each party to have an advisor of their choosing;~~
- ~~13. A statement informing the parties that the District's policies and procedures prohibit knowingly making false statements, including knowingly submitting false information during the resolution process;~~
- ~~14. Detail on how the party may request disability accommodations during the resolution process;~~
- ~~15. The name(s) of the investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinators any conflict of interest that the investigator(s) may have, and~~
- ~~16. Instruction to preserve any evidence that is directly related to the allegations.~~

~~Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of any allegations.~~

~~Notice shall be made in writing and may be delivered by one or more of the following methods:~~

- ~~1. In person;~~
- ~~2. Mailed to the local or permanent address(es) of the parties as indicated in official District records; or~~
- ~~3. Emailed to the parties' District issued email or designated accounts.~~

~~Once mailed, emailed, and/or received in person, notice will be presumptively delivered.~~

Formal Grievance Process Timeline

The District will make a good faith effort to complete the formal grievance process within 30 to 60 school days, including appeal. This time frame can be extended as necessary by the Title IX Coordinators, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

Appointment of Investigators

Once the Title IX Coordinators decides to begin an investigation as part of the formal grievance process, the Title IX Coordinators shall appoint Pool members to conduct the investigation, usually within five school days of determining that an investigation should proceed.

Ensuring Impartiality

Any individual materially involved in the administration of the formal grievance process including the Title IX Coordinators, investigator(s), decision maker(s) and appeal decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific complainant or respondent.

The Title IX Coordinators shall vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the formal grievance process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinators shall determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, shall be remedied. If the source of the conflict of interest or bias is the Title IX Coordinators, concerns should be raised with Superintendent.

The formal grievance process involves an objective evaluation of all relevant evidence obtained, including evidence that supports the conclusion the respondent engaged in a policy violation and evidence that supports the conclusion the respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a complainant, respondent, or witness.

The District presumes that the respondent is not responsible for the reported misconduct unless and until a final determination is made, in accordance with this policy, that Policy 3085 has been violated.

Investigation Timeline

Investigations are completed promptly, normally within 30 school days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations; availability of witnesses; police involvement; and other factors.

~~The District shall make a good faith effort to complete investigations as promptly as possible and will communicate regularly with the parties to update them on the progress and timing of the investigation.~~

~~Delays in the Investigation Process and Interactions with Law Enforcement~~

~~The District may undertake a delay in its investigation, lasting from several days to a few weeks, if circumstances require. Such circumstances include but are not limited to a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or a need for accommodations for disabilities or health conditions.~~

~~The District shall communicate in writing the anticipated duration of the delay and the reason for it to the parties and provide the parties with status updates if necessary. The District will promptly resume its investigation and formal grievance process as soon as feasible. During such a delay, the District will implement supportive measures as deemed appropriate.~~

~~District action(s) or processes may be delayed, but are not stopped by, civil or criminal charges involving the underlying incident(s). Dismissal or reduction of those criminal charges may or may not impact on the District's action(s) or processes.~~

~~Steps in the Investigation Process~~

~~All investigations shall be thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.~~

~~The Title IX Coordinators may act as the investigator.~~

~~All parties shall have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.~~

~~The investigator(s) will typically take(s) the following steps, if not already completed. The steps will not necessarily be completed in this order:~~

- ~~1. Determine the identity and contact information of the complainant;~~
- ~~2. In coordination with school partners, initiate or assist with any necessary supportive measures;~~
- ~~3. Identify all policies implicated by the alleged misconduct and notify the complainant and respondent of all of the specific policies implicated;~~
- ~~4. Assist the Title IX Coordinators with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation;~~

- ~~5. Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties;~~
- ~~6. Meet with the complainant to finalize their interview or statement, if necessary;~~
- ~~7. Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations;~~
- ~~8. Provide each interviewed party and witness an opportunity to review and verify the investigator's summary notes or transcript of the relevant evidence/testimony from their respective interviews and meetings;~~
- ~~9. Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible;~~
- ~~10. When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose;~~
- ~~11. Interview all available, relevant witnesses and conduct follow-up interviews as necessary;~~
- ~~12. Allow each party the opportunity to suggest witnesses and questions they wish the investigator(s) to ask of the other party and witnesses, and document in the investigation report which questions were asked and the rationale for any changes or omissions;~~
- ~~13. Complete the investigation promptly and without unreasonable deviation from the intended timeline;~~
- ~~14. Provide regular status updates to the parties throughout the investigation;~~
- ~~15. Prior to the conclusion of the investigation, provide the parties and their respective advisors, if so desired by the parties, with a list of witnesses whose information will be used to render a finding;~~
- ~~16. Write a comprehensive investigation report fully summarizing the investigation and all witness interviews and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included;~~
- ~~17. The investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report;~~

- ~~18. Prior to the conclusion of the investigation, provide the parties and their respective advisors, when advisors are identified, a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the District does not intend to rely in reaching a determination, for a ten school day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days.~~
- ~~19. The investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses;~~
- ~~20. The investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report;~~
- ~~21. The Investigator(s) shares the report with the Title IX Coordinators and/or legal counsel for their review and feedback;~~
- ~~22. The Investigator will incorporate any relevant feedback, and the final investigation report is then shared with all parties and their advisors through secure electronic transmission or hard copy at least ten school days prior to a meeting with the decision maker. The parties are also provided with a file of any directly related evidence that was not included in the report~~

Role and Participation of Witnesses in the Investigation

~~Witnesses, as distinguished from the parties, who are employees of the District are expected to cooperate with and participate in the District's investigation and formal grievance process. Failure of such witnesses to cooperate with and/or participate in the formal grievance process constitutes a violation of policy and may warrant discipline. Student witnesses and witnesses from outside the District community are encouraged to share what they know about the complaint.~~

~~Although in-person interviews for parties and all potential witnesses are ideal, circumstances (such as summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, Google Meet, or similar technologies may be used for interviews if the investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The District will take appropriate steps to reasonably ensure the security and privacy of remote interviews.~~

~~Though not preferred, witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the investigator(s).~~

Recording of Interviews

~~No unauthorized audio or video recording of any kind is permitted during investigation meetings. If investigator(s) elect to make an audio and/or video record of interviews, all involved parties will be made aware of audio and/or video recording.~~

Evidentiary Considerations in the Investigation

~~The investigation shall not consider:~~

- ~~1. Incidents not directly related to the possible violation, unless they evidence a pattern;~~
- ~~2. The character of the parties; or~~
- ~~3. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, 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, 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.~~

Referral to a Decision-maker

~~If the complaint is not resolved through informal resolution as described above, and after the final investigation report is shared with the parties, the Title IX Coordinators will refer the matter to a Decision-maker to make a determination regarding responsibility.~~

~~The Decision-maker cannot make a determination regarding responsibility prior to ten school days from the conclusion of the investigation—when the final investigation report is transmitted to the parties and the decision-maker—unless all parties and the decision-maker agree to an expedited timeline.~~

~~The Title IX Coordinators will select an appropriate decision-maker or decision-makers from the Pool depending on whether the respondent is an employee or a student.~~

Decision-Maker Designation

~~The District shall designate a single decision-maker or a three-member panel from the Pool, at the discretion of the Title IX Coordinators, and inform the parties and advisors.~~

~~The Decision-maker(s) shall not have had any previous involvement with the investigation. Those who have served as investigators in this investigation may not serve as decision-makers. Those who are serving as advisors for any party may not serve as decision-makers in that matter. The Title IX Coordinators may not serve as a decision-maker in the matter.~~

~~All objections to any Decision-maker(s) must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinators no later than two school days after being notified of the identity of the Decision-maker(s). Decision-maker(s) will only be removed if the Title IX Coordinators concludes that their bias or conflict of interest precludes an impartial consideration of the evidence.~~

~~The Title IX Coordinators shall give the decision-maker(s) a list of the names of all parties, witnesses, and advisors. Any decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and advisors. If a Decision-maker(s) is unsure of whether a bias or conflict of interest exists, they shall raise the concern with the Title IX Coordinators as soon as possible.~~

Eliminatory Consideration by the Decision Maker

~~Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The decision-maker(s) will not consider:~~

- ~~1. Incidents not directly related to the possible violation, unless they evidence a pattern;~~
- ~~2. The character of the parties; or~~
- ~~3. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, 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, 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.~~

~~Previous disciplinary action of any kind involving the respondent may be considered in determining an appropriate sanction upon a determination of a policy violation. This information is only considered at the sanction stage of the process and is not shared with the Decision-maker until then.~~

~~The parties may each submit a written impact statement for the consideration of the decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.~~

Exchange of Questions

~~The decision-maker shall facilitate the exchange of written questions between the parties and direct any written questions to any witnesses before a final determination is made.~~

~~The decision-maker shall invite each party to submit proposed written questions for other parties and witnesses. Upon receipt of the proposed questions, the decision-maker will review the proposed questions and determine which questions will be permitted, disallowed, or rephrased. The decision-maker shall limit or disallow questions on the basis that they are irrelevant, repetitive (and thus irrelevant), or abusive. The decision-maker shall have full authority to decide all issues related to questioning and determinations of relevance. The decision-maker may ask a~~

~~party to explain why a question is or is not relevant from their perspective. The decision-maker shall explain any decision to exclude a question as not relevant or to reframe it for relevance.~~

~~The decision-maker, after any necessary consultation with the parties, investigator(s) and/or Title IX Coordinators, shall provide the parties and witnesses with the relevant written questions to be answered and a deadline for the parties and witnesses to submit written responses to the questions and any appropriate follow-up questions or comments by the parties. The exchange of questions and responses by the parties and witnesses shall be concluded within a three to ten school day period.~~

Deliberation, Decision-Making, and Standard of Proof

~~The decision-maker(s) will then deliberate to determine whether the respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. When determining whether respondent violated Policy 3085, the Decision-maker(s) use the clear and convincing evidence standard; whether there is a high probability that the respondent violated Policy 3085 as alleged.~~

~~When there is a finding of responsibility on one or more of the allegations, the decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).~~

~~The decision-maker will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The decision-maker(s) may, at their discretion, consider the statements; but they are not binding.~~

~~The decision-maker(s) shall review the statements and any pertinent conduct history provided by the appropriate administrator, such as the Title IX Coordinators and shall determine the appropriate sanction(s) in consultation with other appropriate administrators.~~

~~The decision-maker will then prepare a written deliberation statement and deliver it to the Title IX Coordinators.~~

~~This statement must be submitted to the Title IX Coordinators within five school days after the decision-maker held their final meeting with the parties and witnesses or concluded the paper evidence exchange and questioning process, unless the Title IX Coordinators grants an extension. If an extension is granted, the Title IX Coordinators will notify the parties.~~

Notice of Outcome

~~Using the deliberation statement, the decision-maker shall work in conjunction with the Title IX Coordinators as needed to prepare a notice of outcome. The notice of outcome will then be reviewed by legal counsel. The Title IX Coordinators shall then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their advisors within seven school days of receiving the decision-maker(s)' deliberation statement.~~

~~The notice of outcome shall be shared with the parties simultaneously. Notification shall be made in writing and may be delivered by one or more of the following methods:~~

- ~~1. In person;~~
- ~~2. Mailed to the local or permanent address of the parties as indicated in official District records; or~~
- ~~3. Emailed to the parties' District-issued email or otherwise approved account.~~

~~Once mailed, emailed, or received in person, notice will be presumptively delivered.~~

~~The notice of outcome shall articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and shall contain a description of the procedural steps taken by the District from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.~~

~~The notice of outcome shall specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the District is permitted to share such information under state or federal law; any sanctions issued which the District is permitted to share such information according to state or federal law; and any remedies provided to the complainant designed to ensure access to the District's educational or employment program or activity, to the extent the District is permitted to share such information under state or federal law. Detail regarding the final item listed is not typically shared with the respondent unless the remedy directly relates to the respondent.~~

~~The notice of outcome shall also include the relevant procedures and bases for any available appeal options.~~

Sanctions

~~Factors considered when determining sanctions may include, but are not limited to:~~

- ~~1. The nature, severity of, and circumstances surrounding the violation(s);~~
- ~~2. The respondent's disciplinary history;~~
- ~~3. Previous allegations or allegations involving similar conduct;~~
- ~~4. The need for sanctions to bring an end to the Title IX sexual harassment;~~
- ~~5. The need for sanctions to prevent the future recurrence of Title IX Sexual harassment;~~
- ~~6. The need to remedy the effects of the Title IX sexual harassment;~~
- ~~7. The impact on the parties; and~~
- ~~8. Any other information deemed relevant by the decision-maker(s)~~

~~The sanctions shall be implemented as soon as is feasible, either upon the outcome of any appeal or upon the expiration of the window to appeal if no appeal is requested. The sanctions described in this process are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.~~

Student Sanctions

The following are the usual sanctions that may be imposed upon students singly or in combination:

1. ~~A warning;~~
2. ~~Required counseling;~~
3. ~~A required substance abuse treatment program;~~
4. ~~Exclusion from participating in extracurricular activities or other District programs/activities;~~
5. ~~Alternative placement;~~
6. ~~Suspension, which may be in school, out of school, long term, short term, extended, or other suspensions;~~
7. ~~Expulsion; and~~
8. ~~Other actions: In addition to or in place of the above sanctions, the District may assign any other sanctions deemed appropriate.~~

Employee Sanctions

Sanctions for an employee may include:

1. ~~A verbal or written warning;~~
2. ~~A performance improvement plan or management process;~~
3. ~~Enhanced supervision, observation, or review;~~
4. ~~Required counseling;~~
5. ~~Required training or education;~~
6. ~~Probation;~~
7. ~~Denial of pay increase or pay grade;~~
8. ~~Loss of oversight or supervisory responsibility;~~
9. ~~Demotion;~~
10. ~~Transfer;~~
11. ~~Reassignment;~~
12. ~~Assignment to a new supervisor;~~
13. ~~Restriction of professional development resources;~~
14. ~~Suspension with pay;~~
15. ~~Suspension without pay;~~
16. ~~Termination; and~~
17. ~~Other actions: In addition to or in place of the above sanctions, the District may assign any other sanctions as deemed appropriate.~~

Withdrawal or Resignation While Charges Pending

Should a student decide to not participate in the formal grievance process, the process proceeds absent their participation to a reasonable resolution. Should a student respondent permanently

~~withdraw from the District, the formal grievance process shall end, as the District no longer has disciplinary jurisdiction over the withdrawn student.~~

~~Should an employee respondent resign with unresolved allegations pending, the formal grievance process shall end, as the District no longer has disciplinary jurisdiction over the resigned employee.~~

~~Even if a respondent withdraws from the District or resigns, the District shall continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged Title IX sexual harassment.~~

~~An employee who resigns with unresolved allegations pending shall not be eligible for rehire with the District or any school with the District, and the records retained by the Title IX Coordinators shall reflect that status. Any state mandates for reporting of this resignation with respect to licensure or certification shall be met.~~

~~All District responses to future inquiries regarding employment references for that individual shall note that the former employee resigned during a pending disciplinary matter.~~

Appeals

~~Any party may file a request for appeal in writing with the Title IX Coordinators within seven school days of the delivery of the notice of outcome.~~

~~A three member appeal panel chosen from the Pool shall be designated by the Title IX Coordinators or a single appeal decision maker shall chair the appeal. No appeal panelists or appeal decision maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.~~

~~A voting chair of the appeal panel shall be designated.~~

~~The request for appeal shall be forwarded to the appeal chair for consideration to determine whether the request meets the grounds for appeal. This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is filed in the timeframe specified.~~

Grounds for Appeal

~~Appeals shall be limited to the following grounds:~~

- ~~1. Procedural irregularity that affected the outcome of the matter;~~
- ~~2. 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~~

- ~~3. The Title IX Coordinators, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the specific complainant or respondent that affected the outcome of the matter.~~

~~If any of the grounds in the request for appeal do not meet the grounds in this procedure, that request will be denied by the appeal chair, and the parties and their advisors will be notified in writing of the denial and the rationale.~~

~~If any of the grounds in the request for appeal meet the grounds in this procedure, then the appeal chair will notify the other party(ies) and their advisors, the Title IX Coordinators, and, when appropriate, the investigators and/or the original decision-maker(s).~~

~~The other party(ies) and their advisors, the Title IX Coordinators, and, when appropriate, the investigators and/or the original decision-maker(s) shall be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be provided up to five school days to submit a response to the portion of the appeal that was approved and involves them. All responses shall be forwarded by the appeal chair to all parties for review and comment.~~

~~The party who did not bring the appeal, if there is such a party, may also choose to raise a new ground for appeal at this time. If so, the new ground will be reviewed by the appeal chair to determine if it meets the grounds in this procedure and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the investigator(s) and/or original decision-maker(s), as necessary, who will submit their responses within seven school days, which will be circulated for review and comment by all parties.~~

~~Neither party may submit any new requests for appeal after this time period. The appeal chair shall collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses will be shared with the Appeal Panel, and the Panel will render a decision in no more than five school days, barring unusual circumstances. All decisions are by majority vote and apply the clear and convincing evidence standard.~~

~~A notice of appeal outcome shall be sent to all parties simultaneously including the decision on each approved ground and the rationale for each decision. The notice of appeal outcome shall specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the District is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the District is permitted to share these under state or federal law.~~

~~Notification shall be made in writing and may be delivered by one or more of the following methods:~~

- ~~1. In person;~~
- ~~2. Mailed to the local or permanent address of the parties as indicated in official institutional records; or~~
- ~~3. Emailed to the parties' District-issued email or otherwise approved account.~~

~~Once mailed, emailed, and/or received in person, notice will be presumptively delivered.~~

~~Sanctions Status During the Appeal~~

~~Any sanctions imposed by the decision-maker shall take effect following the appeal process. Supportive measures may remain in effect during an appeal process, subject to the same supportive measure procedures above.~~

~~Appeal Considerations~~

- ~~1. Appeal decisions shall defer to the original decision, making changes to the determination only when there is clear error and to the sanction(s) only if there is a compelling justification to do so.~~
- ~~2. Appeals shall not provide for a full reconsideration of the allegation(s) and evidence. In most cases, appeals will be confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.~~
- ~~3. An appeal is not an opportunity for appeal decision-makers to substitute their judgment for that of the original decision-maker(s) merely because they disagree with the determination and/or sanction(s).~~
- ~~4. The appeal chair or decision-maker(s) may consult with the Title IX Coordinators on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation shall be maintained.~~
- ~~5. Appeals granted based on new evidence should normally be returned to the original investigator(s) and/or decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinators or, in limited circumstances, decided on appeal.~~
- ~~6. Once an appeal is decided, the outcome is final. Further appeals are not permitted, even if a decision or sanction is changed on remand, except in the case of a new hearing.~~
- ~~7. In rare cases where a procedural error cannot be cured by the original decision-maker(s), as in cases of bias, the appeal may order a new hearing with a new Decision-maker(s).~~
- ~~8. The results of a new hearing can be appealed once on any of the three available appeal grounds.~~
- ~~9. In cases in which the appeal results in reinstatement to the District or resumption of privileges, all reasonable attempts shall be made to restore the respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.~~

Long Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinators may implement additional long term remedies or actions with respect to the parties and/or the school or the Twin Falls School District community that are intended to stop the Title IX sexual harassment, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

1. Referral to counseling and health services;
2. Referral to the Employee Assistance Program
3. Education of the individual and/or the community;
4. Permanent alteration of work arrangements for employees
5. Provision of school safety escorts;
6. Climate surveys;
7. Policy or procedure modification and/or training;
8. Provision of transportation accommodations;
9. Implementation of long term contact limitations between the parties; and
10. Implementation of adjustments to academic deadlines, course schedules, or other, similar factors.

At the discretion of the Title IX Coordinators, certain long term supports or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinators shall address any remedies owed by the District to the respondent to ensure no effective denial of educational access.

The District shall maintain the privacy of any long term remedies, actions, and measures, provided privacy does not impair the District's ability to provide these services.

Failure to Comply with Sanctions and/or Interim and Long Term Remedies and/or Responsive Actions

All respondents are expected to comply with the assigned sanctions and corrective actions within the timeframe specified by the final decision maker(s).

Failure to abide by the sanction(s) or action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s) or action(s), including suspension, expulsion, and/or termination from the District.

Recordkeeping

The District will maintain for a period of at least seven years records of:

1. Each Title IX sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;

- ~~2. Any disciplinary sanctions imposed on the respondent;~~
- ~~3. Any remedies provided to the complainant designed to restore or preserve equal access to the District's education program or activity;~~
- ~~4. Any appeal and the result therefrom;~~
- ~~5. Any informal resolution and the result therefrom;~~
- ~~6. All materials used to train Title IX Coordinators, investigators, decision-makers, appeal decision makers, and any person who facilitates an informal resolution process. The District shall make these training materials publicly available on the District's website; and~~
- ~~7. Any actions, including any supportive measures, taken in response to a report or formal complaint of Title IX sexual harassment, including:
 - ~~A. The basis for all conclusions that the response was not deliberately indifferent;~~
 - ~~B. Any measures designed to restore or preserve equal access to the District's education program or activity; and~~
 - ~~C. If no supportive measures were provided to the complainant, the reasons why such a response was not clearly unreasonable in light of the known circumstances.~~~~

~~The District will also maintain any and all records in accordance with state and federal laws.~~

~~Disabilities Accommodations in The Resolution process~~

~~The District is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the District's resolution process.~~

~~Anyone needing such accommodations or support should contact the Human Resources office who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinators, determine which accommodations are appropriate and necessary for full participation in the process.~~

~~Revision of These Procedures~~

~~The District reserves the right to make changes to these procedures as necessary. Once those changes are posted online, they are in effect. If laws or regulations change — or court decisions alter — the requirements in a way that impacts these procedures, this document shall be construed to comply with the most recent government regulations or holdings.~~



Procedure History:

~~ADOPTED: 9/14/20~~

ISBA

~~REVISED: —~~

Scope of Procedure

This Title IX Grievance Process applies to all members of Twin Falls School District’s community, including students, employees, and Board members as well as District patrons, guests, visitors, volunteers, and invitees.

Purpose of This Policy and Procedure

Twin Falls School District is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, which are free from sex and gender-based harassment, discrimination, and retaliation. Accordingly, the District prohibits harassment and discrimination on the basis of sex, sexual orientation, gender, gender identity, and pregnancy, as well as retaliation against individuals who report allegations of sex and gender-based harassment and discrimination, file a formal complaint, or participate in a grievance process.

Students, employees, or other members of the District community who believe that they have been subjected to sex or gender-based harassment, discrimination, or retaliation should report the incident to the Title IX coordinator(s), who will provide information about supportive measures and the applicable grievance procedure. Violations of this District procedure or its related policy may result in discipline to either students or employees.

Guiding Principles

Title IX requires school districts to put into place policies and procedures that promote the goal of Title IX, specifically, to prohibit discrimination based on sex, and to respond appropriately if and when sex discrimination occurs or may occur. Title IX explains that when an appropriate official at the District has “actual knowledge” of “sexual harassment” of a student or employee that occurs in one of its educational programs or activities, the District must respond promptly and in a manner that is not “deliberately indifferent.” This standard does not require a perfect response; rather, it requires a response that is not “clearly unreasonable” in light of the known circumstances over which the District exercises control.

Grievance Procedure

1. Receipt of a Complaint, Report, or Information Alleging Sexual Harassment

Upon receipt of a complaint or report (whether verbal or written) of possible sexual harassment, the District shall first determine whether to initiate a formal or informal response. Thus, any and all complaints, reports, or information received by any District employee that sexual harassment is occurring or has occurred shall be immediately forwarded to the District’s Title IX coordinator(s) or other designated employee for review and action as appropriate.

The Title IX coordinator/(s) (coordinator/(s)) shall promptly contact the complainant or reporting party and discuss with them the availability of supportive measures, and will consider the complainant's wishes with respect to the provision of supportive measures. The coordinator/(s) shall explain the availability of these measures to the complainant with or without the filing of a "formal complaint." During this initial meeting, the coordinator/(s) or designee shall explain to the complainant the process for filing a written formal complaint, and shall provide assistance to the complainant to ensure the written formal complaint is properly prepared and submitted.

Emergency Removal (of students): Nothing in this procedure prevents the District from removing a respondent from a District education program or activity on an emergency basis, provided that an individualized safety and risk analysis is performed by the coordinator/(s) and Superintendent who determine that an immediate threat to the physical health or safety of any student or other individual arise from the allegations of sexual harassment that justify removal. The coordinator/(s) and Superintendent shall provide the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights and requirements under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

Administrative Leave (of employees). Nothing in this procedure precludes the District from placing a non-student employee respondent on administrative leave during the pendency of a grievance investigation under this procedure. Notwithstanding the above, prior to placing an employee respondent on administrative leave, the coordinator/(s) or designee shall ensure any rights provided by Section 504 of the Rehabilitation Act of 1973 and/or the Americans with Disabilities Act are not impaired or violated.

2. Providing Supportive Measures

If an informal complaint is filed, (for instance, because the complainant does not wish to file a written formal complaint,) as well as during the pendency of the investigation and the decision concluding a formal complaint, the following supportive measures may be implemented to restore or preserve the complainant's access to the District's educational programs without unreasonably burdening the other party (also referred to herein as respondent).

Supportive measures may include actions taken to protect the safety of all parties or the District's educational environment, or which otherwise deter sexual harassment from occurring in the future. Additional supportive measures may include, but are not limited to: counseling, the availability of a safe place or person in the event complainant feels threatened or uncomfortable, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services at school, mutual restriction of contact between the parties, changes in work locations, leaves of absence, increased security and/or monitoring of locations where prohibited conduct has occurred or may occur in the future, as well as additional measures to protect the complainant, provided the supportive measures initiated are not punitive to the respondent.

3. Filing a Written Formal Complaint

Upon receipt of a written formal complaint, the coordinator/(s) or designee is required to provide written notice to all known complainants and respondents of the allegations and the resulting investigation.

A. General Notice Requirements: The notice will include the District's Title IX grievance process as well as information regarding the District's informal resolution process.

B. Specific Notice Requirements: The written notice shall include the following information:

- i. Information describing the alleged conduct potentially constituting sexual harassment, including sufficient details known at the time the notice is prepared to allow the parties to prepare a response prior to the investigator's initial interview, and shall be delivered to the parties in five school days to allow their preparation for the initial interview.
- ii. Sufficient details include but are not limited to the identities of the parties involved, the conduct allegedly constituting sexual harassment, the date(s), and location(s) of the incident(s).
- iii. A statement that the respondent is presumed to not be responsible for the alleged conduct, and that a determination of responsibility will not be made until the conclusion of the grievance process.
- iv. A statement informing the parties that they are entitled to have an advisor or representative of their choosing who may be, though is not required to be, an attorney, and that the advisor is authorized to review all evidence submitted in the matter.
- v. The notice must inform the parties that District policy and procedure prohibit knowingly making false statements or knowingly submitting false information to the investigator or at any other time during the grievance process.
- vi. The notice must warn the parties that retaliation is prohibited. Accordingly, the parties must be informed that no District employee or 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 or this procedure, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this procedure. Retaliation includes circumstances where intimidation, threats, coercion, or discrimination are made for the purpose of interfering with any right or

privilege secured by Title IX or this procedure. This includes threatening 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. The District shall keep confidential the identity of:

- a. Any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment;
- b. Any complainant;
- c. Any individual who has been reported to be the perpetrator of sex discrimination;
- d. Any respondent; and
- e. Any witness

except:

- a. As may be permitted by FERPA (20 U.S.C. § 1232g) or a FERPA regulation (34 CFR Part 99);
- b. As required by law; or
- c. To carry out the purposes of this procedure, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Complaints alleging retaliation may be filed as an additional charge or counter-charge under these procedures.

C. **Additional Charges:** If, during the course of the investigation, it is determined based on the information gathered that additional allegations or charges are warranted, an amended notice shall be prepared and submitted to the parties including the new allegations and charges as appropriate.

D. **Consolidation:** The coordinator/(s) may consolidate two or more formal complaints into a single action provided that the allegations of sexual harassment and retaliation arise out of a common set of facts or circumstances and if in the course of an investigation, it is determined that:

- i. There is more than one respondent and/or more than one complainant; or
- ii. There are cross-complaints, or additional complaints raised by the original complainant against the original respondent (such as retaliation), or by the respondent against any other party.

4. Conduct of the Investigation, Informal Resolution

In the course of their investigation, the District's coordinator/(s) and designees shall comply with the following requirements.

Investigation

- A. Burden of Investigation: The burden of gathering evidence sufficient to make a determination of responsibility is the responsibility of the District's investigator(s) and not the parties. However, the District's investigator is not authorized to access a party's records that are made or maintained by a health care provider such as a physician, psychiatrist, psychologist, or other recognized health care provider, if the record was made in the course of providing treatment to the party, unless and until written consent from an authorized person is provided to obtain such privileged records for purposes of investigating and resolving the allegations of the formal complaint.
- B. Evidence Offered by Parties: The parties shall be provided an equal opportunity to call witnesses, including fact and expert witnesses, as well as other inculpatory and exculpatory evidence.
- C. No Restrictions: The ability of the parties to discuss the allegations under investigation or to gather and present evidence shall not be restricted.
- D. Equal Representation Rights: All parties shall have the same opportunity to have others present, or to be represented by the advisor of their choice throughout the grievance process, including attendance at related meetings or proceedings. If the District limits access to representation in any way at any time during the proceedings, such limitation shall be equally applied to all parties in the same manner. Access to representation may be limited only where a party is already represented as authorized by this procedure, and the additional representation will unduly increase the cost to the parties, and/or will not otherwise serve to significantly promote a legitimate purpose under this procedure.
- E. Notice of Interviews and Hearings: Adequate notice (typically five school days) of the purpose, date, time, place, and the identities of all participants involved shall be provided to any party whose participation at a hearing, interview, or meeting is invited or expected, and allowing sufficient time for the party to prepare and fairly participate.
- F. Evidentiary Considerations: The investigation shall not consider:
 - i. Incidents not directly related to the possible violation, unless they evidence a pattern;
 - ii. The character of the parties; or

iii. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, 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, 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.

G. Right to Inspect Evidence: All parties shall be provided equal access to inspect and review any or all evidence gathered during the investigation related to the allegations of the formal complaint, whether or not relied upon or referred to in the investigator's report. This will ensure that the parties can respond to the evidence prior to the conclusion of the investigation. Prior to completion of the investigation report, the investigator shall provide the parties and their respective advisors, when advisors are identified, a secured electronic or hard copy of the evidence subject to inspection. The parties must have at least ten school days to submit a written response which the investigator shall consider prior to completion of the investigative report. All such evidence shall be made available to all parties at any hearing to give the parties equal opportunity to refer to such evidence during the hearing, including cross-examination of adult parties.

H. Investigative Report: At least ten school days prior to a hearing, or other time of determination regarding responsibility, the investigator shall send to all parties and their advisors, if any, by electronic format or hard copy, a copy of the investigative report for the parties' review and written response. The parties' responses shall be made part of the record.

Informal Resolution: The informal resolution process may include mediation, or other meeting of the parties that does not involve a full investigation and adjudication of the complaint. The District may not require the parties to participate in an informal resolution process. Informal resolution is available only if a written formal complaint was submitted to the coordinator/(s). If these conditions are satisfied, then at any time during the course of an investigation, but prior to the time of the Decision-Maker's final determination of responsibility, the parties may request the coordinator/(s) to initiate the informal resolution process. In so doing, the coordinator/(s) is required to comply with the following:

A. Provide the parties with written notice informing them of the allegations at issue and the requirements of the resolution process. These requirements include the fact that a written agreement signed by the parties that resolves the allegations at issue will preclude the parties from resuming the formal complaint process that arose from the same allegations. The parties will also be informed that at any time prior to reaching 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, and will be notified that the records submitted or discussed during the informal process will be maintained by the District as part of the record, and may be used by the Decision-Maker to determine responsibility.

- B. Require the parties submit voluntary, written consent to participate in the informal resolution process.
- C. Ensure that the informal resolution process is not made available to resolve allegations that an employee sexually harassed a student.
- D. An informal resolution, signed and agreed to by the parties thereto, is not appealable.

Dismissal of a Formal Complaint: A written formal complaint may be dismissed by the coordinator/(s) under any of the following circumstances, and prior to a finding of responsibility:

- A. After investigating the allegations of the written formal complaint, dismissal is required if:
 - i. The coordinator/(s) or designee determines that the conduct alleged in the complaint, even if proven, would not constitute sexual harassment as defined herein; or
 - ii. The alleged conduct did not occur in a District education program or activity; or
 - iii. The alleged conduct did not occur against a person in the United States.

Dismissal of the Title IX formal complaint, however, does not preclude action under another provision of the District's Code of Conduct or other District Policy.

- B. If the Complainant notifies the coordinator/(s) in writing that he or she would like to withdraw the formal complaint or any allegations contained therein.
- C. If the respondent is no longer enrolled or employed by the District.
- D. If specific circumstances exist which prevent the investigator from gathering evidence sufficient to reach a determination regarding the merits of the formal complaint or allegations therein.

Upon dismissing a formal complaint, the coordinator/(s) shall simultaneously inform the parties in writing that the complaint has been dismissed, and shall identify the reason(s) for the dismissal. This decision may be appealed in accordance with the Appeals portion of this procedure, below.

5. Decision-Maker's Participation

If the matter is not dismissed for one of the reasons set forth above and is not resolved by the parties through the informal resolution process then, (following completion of the investigation, including issuance of the investigator's final investigation report,) the matter shall be submitted to the Decision-Maker for review and issuance of a determination of responsibility. The Decision-Maker cannot make a determination regarding responsibility until ten school days after the date the final investigation report is transmitted to the parties

and the Decision-Maker, unless all parties and the Decision-Maker agree to an expedited timeline.

The coordinator/(s) shall designate a single Decision-Maker or a three-member panel, and inform the parties and their advisors.

The Decision-Maker(s) may not have had any previous involvement with the investigation. Those who have served as investigators in the investigation cannot serve as Decision-Makers. Those who are serving as advisors for any party cannot serve as Decision-Makers in that matter. The coordinator/(s) is also prohibited from serving as a Decision-Maker in the matter.

All objections to any Decision-Maker must be raised in writing. Any written objection must detail the rationale for the objection and must be submitted to the coordinator/(s) no later than two school days after being notified of the Decision-Maker's identity. Decision-Makers shall not be removed unless the coordinator/(s) concludes that the Decision-Maker's bias or conflict of interest precludes a fair and impartial consideration of the evidence.

The coordinator/(s) shall give the Decision-Maker(s) a list of the names of all parties, witnesses, and advisors. Upon review thereof, if any Decision-Maker believes they cannot make an objective determination, they must recuse themselves from the proceedings. If a Decision-Maker is unsure whether a bias or conflict of interest exists, they shall immediately disclose their concern(s) to the coordinator/(s) and simultaneously inform the parties and their advisors.

No less than ten school days prior to any meeting or the decision-making phase of the process, the coordinator/(s) or the Decision-Maker shall send notice to all parties. Once mailed, emailed, or received in-person, Notice will be presumptively delivered.

The Notice shall contain the following:

- A. A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions that could result.
- B. The time, date, and location of any meeting.
- C. Any technology that will be used to facilitate the meeting.
- D. The name and contact information of the Decision-Maker, along with an invitation to object to any Decision-Maker on the basis of demonstrated bias. Any written objection must detail the rationale for the objection and must be submitted to the coordinator/(s) no later than two school days after being notified of the Decision-Maker's identity.
- E. Information on whether the meeting will be recorded and, if so, information on access to the recording for the parties after the meeting.
- F. A statement that if any party does not appear at the scheduled meeting, the meeting will only be rescheduled for compelling reasons.

- G. Notification that the parties may have the assistance of an advisor of their choosing at the meeting.
- H. A copy of all the materials provided to the Decision-Maker(s) about the matter.
- I. An invitation for the parties to review and submit a written response to the final investigation report within ten school days of the date of the notice.
- J. An invitation to each party to submit to the Decision-Maker any written, relevant questions they want the Decision-Maker to ask of any other party or witness within five school days of the date of the notice.
- K. An invitation to each party to submit to the Decision-Maker an impact statement, pre-meeting, that the Decision-Maker will review during any sanction determination.
- L. An invitation to contact the coordinator/(s) to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at any meeting or in the decision-making process, at least five school days prior to the meeting/final determination.
- M. Whether parties can or cannot bring mobile phones or devices into the meeting.

Meetings for possible violations that occur near or after the end of a school year, assuming the respondent is still subject to Policy 3085 and Procedure 3085P, and are unable to be resolved prior to the end of the school year will typically be held as soon as possible given the availability of the parties, but no later than immediately upon the start of the following school year. The District will implement appropriate supportive measures intended to correct and remediate any hostile environment while the resolution is delayed.

- A. **Evidentiary Consideration by the Decision-Maker:** Whether at a hearing or through an exchange of questions, only relevant, credible evidence will be admitted into evidence and considered by the Decision-Maker. Any evidence that the Decision-Maker(s) determine(s) is relevant and credible may be considered. The Decision-Maker will not consider:
 - i. Incidents not directly related to the possible violation, unless they evidence a pattern;
 - ii. The character of the parties; or
 - iii. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, 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, 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.

Previous disciplinary action of any kind involving the respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information may only be considered at the sanction stage of the process and cannot be shared with the Decision-Maker until that time.

The parties may each submit a written impact statement for the consideration of the Decision-Maker(s) at the sanction stage of the process when a determination of responsibility is reached.

B. Hearing Procedure and Exchange of Questions Procedure: At the time the matter is referred to the Decision-Maker(s), the coordinator(s) shall determine, based on the parties involved and the circumstances of the alleged sexual harassment, whether to hold a hearing or to initiate an exchange of questions procedure, and shall so inform all parties and their advisors. Both of these decision-making procedures are discussed below. Upon their selection, the Decision-Maker(s) shall review the evidence and issue a determination of responsibility based on the following circumstances and procedures.

C. Exchange of Questions Procedure: Where a party involved is an elementary student, or where the coordinator(s) otherwise determines that a hearing is not appropriate under the circumstances, the coordinator(s) will initiate the Exchange of Questions Procedure, which provides as follows.

After the coordinator(s) or designee has submitted the investigative report to the parties pursuant to this procedure and before reaching a determination regarding responsibility, the Decision-Maker(s) shall provide each party an opportunity to submit written, relevant questions that party desires to ask of any party or witness, and shall subsequently provide each party with the answers. The Decision-Maker will also allow for additional, limited follow-up questions from each party to the other, and provide both with complete copies of the answers. Upon receipt of the proposed questions, the Decision-Maker will review the proposed questions and determine which questions will be permitted, disallowed, or rephrased. The Decision-Maker shall limit or disallow any questions that are irrelevant, repetitive (and thus irrelevant), or abusive. The Decision-Maker shall have full authority to decide all issues related to questioning and determinations of relevance. The Decision-Maker may ask a party to explain why a question is or is not relevant from their perspective. The Decision-Maker shall explain any decision to exclude a question as not relevant or to reframe it for relevance. Whether a hearing is held or not, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant:

- i. 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
- ii. 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. This basis for asking questions or presenting evidence shall not be allowed if the respondent is an adult, non-student employee, because consent is not a recognized defense in cases where the complainant is a student and the respondent is an employee.

The Decision-Maker, after any necessary consultation with the parties, investigator(s), and/or coordinator(s), shall provide the parties and witnesses with:

- i. The relevant written questions to be answered; and
- ii. A deadline for the parties and witnesses to submit written responses to the questions and any appropriate follow-up questions or comments by the parties.

The exchange of questions and responses by the parties and witnesses shall be concluded within a ten school day period.

6. Decision Making Process and Determination Requirements

Following its review of the evidence submitted by the investigator and the parties, the Decision-Maker, (who cannot be the coordinator(s)) shall issue a written determination of responsibility. To reach this determination, the District's burden of proof — clear and convincing evidence — must be described, and the burden satisfied, before the respondent can be found responsible for sexual harassment in violation of Title IX.

The written determination of responsibility shall include the following information:

- A. Identification of the allegations potentially constituting sexual harassment in violation of Title IX.
- B. A description of the procedural steps taken from receipt of the written formal complaint through the determination, including notifications to the parties, interviews of the parties and witnesses, site visits, methods used to obtain other evidence, and hearings used.
- C. Findings of fact supporting the determination.
- D. Conclusions regarding application of the District's code of conduct to the facts.
- E. A statement of and rationale for the determination as to each allegation, including any determination regarding responsibility, any disciplinary action to be imposed on the respondent, and identification of remedies and measures, if any, that will be provided to restore or preserve equal access to the District's educational programs and activities to be provided to the complainant.
- F. Considerations for disciplinary action. Factors considered when determining discipline may include, but are not limited to:
 - i. The nature, severity of, and circumstances surrounding the violation(s);
 - ii. The respondent's disciplinary history;
 - iii. Previous allegations or allegations involving similar conduct;

- iv. The need for discipline to bring an end to the Title IX sexual harassment;
- v. The need for discipline to prevent the future recurrence of Title IX Sexual harassment;
- vi. The need to remedy the effects of the Title IX sexual harassment;
- vii. The impact on the parties; and
- viii. Any other information deemed relevant by the decision-maker(s)

G. The discipline imposed shall be implemented as soon as is feasible, either upon the outcome of any appeal or upon the expiration of the window to appeal if no appeal is requested. The sanctions described in this process are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

H. Identification of the procedures for filing an appeal and the permissible grounds for complainant or respondent to base their appeal.

The Decision-Maker shall simultaneously provide their written determination to all parties. The determination becomes final either, (where an appeal is filed,) on the date the parties are provided copies of the written determination of the result of the appeal; or, (if no appeal is filed,) the date on which an appeal would no longer be considered timely.

The coordinator/(s) is responsible for the effective implementation of any and all remedies set forth in the written determination of responsibility. In the event a student expulsion is recommended, pursuant to and in accordance with the requirements of Idaho Code § 33-205, the coordinator/(s) shall ensure that an expulsion hearing is scheduled and heard by the Board of Trustees.

7. Appeals

Any party may file a request for appeal in writing with the coordinator/(s) within five school days of the delivery of the notice of a final decision.

A single appeal decision-maker shall chair the appeal. No appeal decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The request for appeal shall be forwarded to the appeal chair for consideration to determine whether the request meets the grounds for appeal. This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is filed in a timely manner.

Appeals shall be limited to the following grounds:

- A. Procedural irregularity that affected the outcome of the matter;

- 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;
- C. The coordinator/(s), investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the specific complainant or respondent that affected the outcome of the matter;

Appeal procedure: Upon receipt of a valid appeal, the coordinator/(s) shall:

- A. Notify the other party in writing that an appeal has been filed, and implement the appeal procedure fairly and equally for both parties.
- B. Ensure the appeal decision-maker(s) is not:
 - i. The same person(s) as the Decision-Maker(s) that issued the written determination of responsibility;
 - ii. The person who issued the dismissal;
 - iii. The investigator; or
 - iv. The coordinator/(s).
- C. Ensure the appeal decision-maker has been trained in accordance with the requirements of this grievance procedure.
- D. The appealing party shall have ten school days following the delivery of the notice of the appeal to submit a written statement in support of the appeal and challenging the outcome. The responding party shall have ten school days following the delivery of the appealing party's statement in support of appeal to submit the responding party's written statement in opposition to the appeal (and supporting the outcome that is the subject of the appeal). In the event the parties and the appeal decision-maker agree to a different briefing schedule (whether allowing more or less time), the time allowed to prepare a written statement shall be the same for all parties.
- E. Issue a written decision describing the result of the appeal and identifying the bases and rationale for the decision.
- F. Provide the written decision simultaneously to all parties.

Requirements of the Title IX Grievance Procedure

The following requirements apply to the conduct of the Title IX Grievance procedure set forth above.

- 1. Equitable treatment of the parties:** At all times, both complainants and respondents shall be equitably treated by providing remedies to a complainant until a determination of responsibility for sexual harassment has been made against the respondent. No sanction or discipline may be imposed against the respondent unless and until the process required by this procedure has been completed. Until a final determination of responsibility has been issued only “supportive measures” may be initiated that are non-disciplinary or non-punitive and avoid burdening the respondent. Any and all final remedies, however, must be designed to restore or preserve equal access to the District’s education program or activity. Such remedies may include the same individualized services described as “supportive measures;” however, following the decision, such remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent
- 2. Objective evaluation of the evidence:** The formal grievance process involves an objective evaluation of all relevant evidence obtained, including evidence that supports the conclusion the respondent engaged in a violation of policy or procedure and evidence that supports the conclusion the respondent did not. Credibility determinations may not be based solely on an individual’s status or participation as a complainant, respondent, or witness.
- 3. Lack of bias:** Any individual materially involved in the administration of the formal grievance process including the coordinator/(s), investigator(s), decision-maker(s) and appeal decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific complainant or respondent.
- 4. Title IX training of District participating staff:** Any individual designated by the District as a coordinator/(s), investigator, decision-maker, or any person designated by the District to facilitate an informal resolution process, cannot have a conflict of interest or bias for or against complainants or respondents generally, or against any individual complainant or respondent. The District shall ensure that coordinator/(s)s, investigators, decision-makers, and any person who facilitates an informal resolution process, receives training on the definition of “sexual harassment” set forth in this procedure, the scope of the District’s education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The District shall ensure that Decision-Makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, as required by this procedure. The District shall also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in this procedure. All materials used to train coordinator/(s)s, investigators, decision-makers, and any persons facilitating an informal resolution process, shall not rely on stereotypes based on gender, and must promote impartial investigations and adjudications of formal complaints of sexual harassment, and provide guidance therefor.

5. Presumption of innocence: The District presumes that the respondent is not responsible for the reported misconduct unless and until a final determination is made, in accordance with this procedure, that Policy 3085 or procedure 3085P prohibiting sex discrimination and sexual harassment has been violated.

6. Promptness: Investigations are completed promptly, normally within 30 school days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations; availability of witnesses; police involvement; and other factors.

Commented [1]: In the previous version, we selected 60 but that referred to the formal complaint process, not just the investigation. "All allegations of Title IX sexual harassment, whether by notice or formal complaint, shall be acted upon promptly. Formal complaints that are addressed through this process typically do not take in excess of 60 calendar days to resolve."

The District shall make a good faith effort to complete the investigation as promptly as possible and will communicate regularly with the parties to update them on the progress and timing of the investigation.

Notwithstanding the above, The District may undertake a delay in its investigation, lasting from several days to a few weeks, if circumstances require. Such circumstances include but are not limited to a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or a need for accommodations for disabilities or health conditions.

The District shall communicate in writing the anticipated duration of the delay and the reason for it to the parties and provide the parties with status updates if necessary. The District will promptly resume its investigation and formal grievance process as soon as feasible. During such a delay, the District will implement supportive measures as deemed appropriate.

District action(s) or processes may be delayed, but are not stopped by, civil or criminal charges involving the underlying incident(s). Dismissal or reduction of those criminal charges may or may not impact on the District's action(s) or processes.

7. Description of sanctions. The following describes the range of sanctions that may be implemented following a finding of responsibility.

Student Discipline: The following are the usual sanctions that may be imposed upon students singly or in combination:

- A. A warning;
- B. Required counseling;
- C. A required substance abuse treatment program;
- D. Exclusion from participating in extracurricular activities or other District programs/activities;
- E. Alternative placement;
- F. Suspension, which may be in-school, out-of-school, long-term, short-term, extended, or other suspensions;
- G. Expulsion (in compliance with I.C. § 33-205); and

H. Other actions: In addition to or in place of the above sanctions, the District may assign any other sanctions deemed appropriate.

Employee Sanctions: Sanctions for an employee may include:

- A. A verbal or written warning;
- B. A performance improvement plan or management process;
- C. Enhanced supervision, observation, or review;
- D. Required counseling;
- E. Required training or education;
- F. Probation;
- G. Denial of pay increase or pay grade;
- H. Loss of oversight or supervisory responsibility;
- I. Demotion;
- J. Transfer;
- K. Reassignment;
- L. Assignment to a new supervisor;
- M. Restriction of professional development resources;
- N. Suspension with pay;
- O. Suspension without pay;
- P. Termination (in compliance with I.C. § 33-513(5), in the case of certificated employees);
- Q. Other actions: In addition to or in place of the above sanctions, the District may assign any other sanctions as deemed appropriate.

8. **Burden of proof.** When determining whether the respondent is responsible for violating Policy 3085 or Procedure 3085P by discriminating based on sex and/or for sexual harassment as defined herein, the decision-maker shall apply the clear and convincing evidence standard; which requires that the evidence proves there is a high probability that the respondent violated the policy or procedure.

9. **Appeals.** Any party may file a request for appeal in writing to the coordinator/(s) within five school days of the delivery of the notice of a final outcome.

10. **Supportive measures:** Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties. Supportive measures are designed to restore or preserve access to the District's education program or activity, including measures designed to protect the safety of all parties or the District's educational environment, and/or deter Title IX sexual harassment. Examples of supportive measures may include, but are not limited to:

- A. Referral to counseling, medical, and/or other healthcare services;
- B. Referral to the Employee Assistance Program;
- C. Referral to community-based service providers;
- D. Visa and immigration assistance;
- E. Education of the school community or community subgroup(s);

- F. Altering work arrangements for employees;
- G. Safety planning;
- H. Providing school safety escorts;
- I. Providing transportation accommodations;
- J. Implementing contact limitations, such as no contact orders, between the parties (note: allegations of violations of a no contact order will be investigated as collateral misconduct under this process);
- K. Academic support, extensions of deadlines, or other course or program-related adjustments;
- L. Emergency warnings;
- M. Class schedule modifications, withdrawals, or leaves of absence;
- N. Increased security and monitoring of certain areas of the school; and
- O. Any other actions deemed appropriate by the coordinator/(s).

11. Recognition of privileges: At no time during this grievance procedure may any evidence (whether through testimony or documents) be required, admitted, relied upon, or otherwise obtained by asking questions or admitting evidence that constitutes, or seeks disclosure of, information protected by a legally recognized privilege, unless the person holding the privilege has knowingly and freely waived the privilege.

12. Recordkeeping;

- A. The District shall maintain for a period of seven years records of:
 - i. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required where a hearing is held, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the District's education program or activity;
 - ii. Any appeal and the result therefrom;
 - iii. Any informal resolution and the result therefrom; and
 - iv. All materials used to train coordinator/(s)s, investigators, decision-makers, and any person who facilitates an informal resolution process. The District shall make these training materials publicly available on its website.
- B. For each response to a report of harassment or discrimination based on sex, the District shall create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the District shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it took measures designed to restore or preserve equal access to the District's education program or activity. If the District does

not provide a complainant with supportive measures, then the coordinator/(s) must document the reasons why such a response was not clearly unreasonable in light of the known circumstances (i.e., was not a result of sex discrimination). The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken or to be taken.

Title IX Grievance Procedure Definitions

The following definitions apply to the identified terms used in this procedure:

“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to:

1. The District’s coordinator/(s); or
2. Any District official possessing the authority to institute corrective measures on behalf of the District; or
3. Any employee of the 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 District with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the District. “Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the coordinator/(s) as set forth in this procedure.

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

“Consent” Under circumstances where a sexual assault is alleged by a student against an adult, non-student employee, the District does not recognize the defense of “consent,” however it is defined. Where the parties are both adults, however, the following definition of “consent” will apply: Consent occurs where there is a knowing, voluntary, and clear grant of permission, by word or action, to engage in sexual activity. Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged. Consent may be withdrawn. A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. It is a violation of policy if a respondent engages in sexual activity with someone who is incapable of giving consent, or is otherwise incapacitated.

“Incapacitation” occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing, informed consent. For example, they cannot understand the “who, what, when, where, why, or how” of their sexual interaction.

“Formal Complaint” means a document filed by a complainant, or signed by the coordinator/(s), alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment. At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in the educational programs or activities of the District. A formal complaint may be filed with the coordinator/(s) in person, by mail, or by electronic mail, or by using the contact information listed on the District’s website. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission, (such as by electronic mail or through an online portal provided for this purpose by the District,) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the coordinator/(s) signs a formal complaint, the coordinator/(s) is not a complainant or otherwise a party to this grievance procedure, and must comply otherwise comply with the requirements of this procedure.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. “Quid pro quo” harassment, which occurs when a District employee conditions the provision of a District benefit, service, or assistance on an individual’s participation in unwelcome sexual conduct;
2. “Hostile Environment,” which is defined as unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to District education program or activity; or
3. Physical threats and attacks, including “sexual assault,” defined as forcible and non-forcible sex offenses as defined in the Clery Act, or dating violence, domestic violence, or stalking as defined in the Violence Against Women Act.

“Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent in cases where either no formal complaint has been filed, or both before and/or after the filing of a formal complaint. Such measures are designed to restore or preserve equal access to the District’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District’s educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The District shall maintain as confidential any supportive measures provided to the complainant or respondent, provided that maintaining such confidentiality will not impair the ability of the District to provide the supportive measures. The coordinator/(s) is responsible for coordinating the effective implementation of all supportive measures.

“Elementary school” and “secondary school” as used in this procedure refer to a local educational agency, as defined in the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, a preschool, or a private elementary or secondary school, and include this District.

Revision of These Procedures

The District reserves the right to make changes to these procedures as necessary. Once those changes are posted online, they shall be in effect. If laws or regulations change or court decisions alter the requirements in a way that impacts these procedures, this document shall be construed to comply with the most recent government regulations or holdings.

References: 34 CFR Part 106 Nondiscrimination on the Basis of Sex in Educational Programs or Activities Receiving Federal Financial Aid

Procedure History:

Promulgated on:

Revised on:

Reviewed on:

The Board endeavors to take steps to prevent and respond to known instances of relationship abuse and sexual assault. Such conduct ~~by students, or third parties,~~ is strictly prohibited and shall not be tolerated on District premises, including, but not be limited to buildings, facilities, and grounds on the District campuses, school buses, and District parking areas. Moreover such conduct will not be tolerated ~~or at any District sponsored activities,~~ regardless of location. ~~including, but not be limited to buildings, facilities, and grounds on the District campus, school buses, District parking areas, and the location of any District sponsored activity. This includes instances in which the conduct occurs off the District premises, but impacts a District related activity.~~

Relationship abuse includes the intentional use of physical, sexual, verbal, or emotional abuse or violence ~~by a person~~ to harm, threaten, intimidate, or control another person in a current or past dating relationship. Sexual assault includes sexual violence, sexual abuse, sexual stalking, and rape. The majority of these instances are dealt with utilizing Procedure 3085P Title IX Sexual Harassment Grievance Procedure as described below. If the Title IX Coordinator determines that an alleged infraction does not fall within the scope of Procedure 3085P to address, it may be addressed through this policy.

Students whose behavior is found to be in violation of this policy will be subject to discipline, up to and including expulsion. Third parties whose behavior is found to be in violation of this policy shall be subject to appropriate sanctions as determined and imposed by the Superintendent or Board.

Students, ~~staff members,~~ or third parties may also be referred to law enforcement officials.

~~Should the District or a~~Any of the District's ~~its~~² employees ~~who~~ have reason to believe that a child under the age of 18 years of age has been abused, abandoned, or neglected or has been subjected to conditions which would reasonably result in abuse, abandonment, or neglect, the school shall follow appropriate reporting requirements pursuant to the Child Protective Act. Employees shall also report the incident to the District's Title IX coordinator or deputies, as described in Policy 3085.

The Superintendent is hereby directed to develop administrative procedures to implement this policy while recognizing that some violations of this policy may fall within the scope of Procedure 3085P Title IX Sexual Harassment Grievance Procedure. Procedures shall include descriptions of prohibited conduct, the definition of abuse pursuant to the Child Protective Act, reporting and investigative procedures, prevention and response procedures, and provisions to ensure notice of this policy is provided to students.

The Board shall review this policy annually.

Addressing Sexual Harassment/Assault

Any person wishing to report an instance of sexual harassment/assault may do so in accordance with Policy 3085 submit a completed Complaint Form 3295F to the non-discrimination coordinator.

~~When the District becomes aware of a report of sexual violence against a student, the District shall direct the nondiscrimination coordinator to investigate the incident in accordance with Policy 4120 Uniform Grievance Procedure and with Title IX of the Education Amendments of 1972. This shall apply to sexual assaults that occur on school grounds, in the context of a District education program or activity of the school whether on school property or not, or which have continuing effects on campus or in an off-grounds education program or activity. This shall occur regardless of whether the assault is brought to the District's attention by a student or other person making a report to a District employee, by the witnessing of an incident by a District employee, media reporting, or any other channel. The nondiscrimination coordinator shall assess whether a sexual assault has occurred based on a standard of whether it is more likely than not that the sexual assault occurred based on the preponderance of the evidence.~~

If the Title IX Coordinator determines that an alleged infraction does not fall within the scope of Procedure 3085P to address, it may be addressed through this policy by following the Uniform Grievance Procedure. The District shall maintain the confidentiality of all parties involved, ~~the student,~~ as far as possible, and may notify individuals ~~the student~~ of what information may need to be disclosed in the course of the investigation, to whom, and why. The District shall take steps to prevent retaliation toward individuals ~~a student~~ who file a complaint regarding sexual assault. The District shall immediately act to provide supportive measure ~~remediate the situation,~~ without waiting for the completion of the investigation, and shall notify the ~~student individual~~ of any services available to assist him or her.

Such ~~remediation~~ supportive measures during or following an investigation may include:

1. Providing an effective escort to ensure the complainant can move safely between classes and activities;
2. Ensuring that the complainant and the perpetrator or alleged perpetrator do not share classes, extracurricular activities, or a school;
3. Provision of victim services such as medical, counseling, and academic support services;
4. Arranging for the complainant to have extra time to complete or retake a class without academic penalty;
5. Disciplinary action against the perpetrator;
6. Counseling for the perpetrator;
7. Conducting training with a group of students if, for example, the sexual violence created a hostile environment within a particular grade level or on a sports team;
8. Ensuring the school has access to a counselor trained to assist victims of sexual violence;
9. Training employees on how to handle reports of sexual violence;
10. Informing students about the problem of sexual violence and how to seek assistance;
11. Conducting bystander intervention and sexual assault prevention programs with students;
12. Issuing official statements that the District will not tolerate and will respond to any incidents of sexual violence; and

13. Assessing the school climate to determine whether the campus is free of sexual violence and determining what steps should be taken to address any problems.

Following the investigation, to the extent possible and not in violation of any applicable law, the complainant shall be notified of the outcome of the complaint, including whether the investigation determined that the alleged conduct occurred, remedies being offered to the complainant, any sanctions imposed on the perpetrator that directly relate to the complainant, and any other steps taken to eliminate the hostile environment or prevent recurrence.



Cross References: 4120 Grievance Procedure
3085 Sexual Harassment, Discrimination and Retaliation Policy
3085P Title IX Sexual Harassment Grievance Procedure, Requirements
and Definitions

~~**Other References:** U.S. Department of Education Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence (2014), available at: https://www2.ed.gov/about/offices/list/ocr/docs/qa_201404_title_ix.pdf~~

Legal References: I.C. § 16-1601 et seq. Child Protective Act
I.D.A.P.A. 08.02.03.160 Safe Environment and Discipline

Policy History

ADOPTED: 10/13/14

ISBA

REVISED:

Sexual harassment is a form of sex discrimination and is prohibited in the District. An employee, District agent, or student engages in sexual harassment whenever he/she makes unwelcome advances, requests sexual favors, or engages in other verbal, non-verbal or physical conduct of a sexual or sex-based nature, imposed on the basis of sex, that:

1. denies or limits the provision of educational aid, benefits, services, opportunities, or treatment, or that makes such conduct a condition of a student's academic status; or
2. has the purpose or effect of:
 - a. substantially interfering with the student's educational environment;
 - b. creating an intimidating, hostile, or offensive educational environment;
 - c. depriving a student of educational aid, benefits, services, opportunities or treatment; or
 - d. making submission to or rejection of such unwelcome conduct the basis for academic decisions affecting a student.

The terms "intimidating", "hostile" and "offensive" include conduct which has the effect of humiliation, embarrassment, or discomfort. Examples of sexual harassment include, but are not limited to, unwelcome touching, crude jokes or pictures, discussions of sexual experiences, pressure for sexual activity, intimidation by words, actions, insults or name calling, teasing related to sexual characteristics, and spreading rumors related to a person's alleged sexual activities.

Students who believe that they may have been sexually harassed or intimidated should contact a counselor, teacher, Title IX coordinator or administrator who will assist them in the complaint process, per Policy 3085 and Procedure 3085P. If the Title IX Coordinator determines that an alleged infraction does not fall within the scope of Procedure 3085P to address, it may be addressed through this policy. Supervisors or teachers who knowingly condone, or fail to report or assist a student to take action to remediate such behavior of sexual harassment or intimidation, may themselves be subject to discipline.

Any District employee who is determined, after an investigation, to have engaged in sexual harassment will be subject to disciplinary action up to and including discharge. Any student of the District who is determined, after an investigation, to have engaged in sexual harassment will be subject to disciplinary action, including, but not limited to, suspension and expulsion consistent with the discipline policy. Any person knowingly making a false accusation regarding sexual harassment will likewise be subject to disciplinary action up to and including discharge with regard to employees, or suspension and expulsion with regard to students.

The District will make every effort to ensure that employees or students accused of sexual harassment or intimidation are given the appropriate opportunity to defend themselves against such accusations.

To the greatest extent possible, complaints will be treated in a confidential manner. Limited disclosure may be necessary in order to complete a thorough investigation. Retaliation against persons who file a complaint is a violation of law prohibiting discrimination and will lead to disciplinary action against the offender.

Any individual seeking further information should contact the Superintendent for the name of the current Title IX Coordinator for the District. The Superintendent shall ensure that the student and employee handbooks identify the name, address, and telephone number of the individual responsible for coordinating the District's compliance efforts.

An individual with a complaint alleging a violation of this policy which does not fall within the scope of allegations addressed by Procedure 3085P shall follow the Uniform Grievance Procedure.



Cross Reference: 4120 Uniform Grievance Procedure
3085 Sexual Harassment, Discrimination and Retaliation Policy
3085P Title IX Sexual Harassment Grievance Procedure, Requirements and Definitions

Legal References: 20 U.S.C. § 1681, et seq. Title IX of the Educational Amendments
34 CFR Part 106
I.C. § 67-5909 Acts Prohibited

Policy History

ADOPTED: 8/11/14

REVISED:

It is the Board's desire that administrative procedures for settling complaints and grievances of any and all persons (i.e., students, patrons, hereinafter "Grievant") be an orderly process within which solutions may be pursued. Further, it is the intent of the Board that the procedure will provide prompt and equitable resolution at the lowest possible administrative level. Additionally, it is the Board's desire that each grievant be assured an opportunity for orderly presentation and review of complaints without fear of reprisal. Certified staff grievance refer to CBA, Policy 5900; classified staff grievance refer to Policy 5800/5800P.

Grievance Procedure

This grievance procedure should be followed if a grievant believes that the Board, its employees or agents have violated the grievant's rights guaranteed by the State or federal constitutions, State or federal statutes, or Board policy, except that any allegation of sexual misconduct against a student shall be addressed in accordance with Policy 3085.

The District will endeavor to respond to and resolve complaints without resorting to this grievance procedure and, if a complaint is filed, to address the complaint promptly and equitably. The right of a person to prompt and equitable resolution of the complaint filed hereunder shall not be impaired by the person's pursuit of other remedies. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies, and use of this grievance procedure does not extend any filing deadline related to the pursuit of other remedies.

Grievances will be processed according to the step-by-step process outlined below. However, if a person designated to hear a grievance is the subject of the grievance, the grievance process will begin at the next highest step and the process shall be modified as needed to meet the objectives of the Grievance Procedure. If a grievance is directly based on official Board action, the grievance shall be directed to the Clerk of the Board. The grievance may be heard by the Board at the sole discretion of the Board.

Level 1: Informal

A grievant with a complaint is encouraged to first discuss it with the teacher, counselor, or building administrator involved, with the objective of resolving the matter promptly and informally. An exception is that complaints of sexual misconduct against a student should be addressed in accordance with Policy 3085. ~~An exception is that complaints of sexual harassment should be discussed with the first line administrator that is not involved in the alleged harassment.~~

Level 2: Principal

If the complaint is not resolved at Level 1, the grievant may file a written grievance stating: 1) the nature of the grievance and 2) the remedy requested. It must be signed and dated by the grievant. The Level 2 written grievance must be filed with the principal within 60 days of the event or incident, or from the date the grievant could reasonably become aware of such occurrence.

If the complaint alleges a violation of Board policy or procedure, the principal shall investigate and attempt to resolve the complaint within 30 school business days. If either party is not satisfied with the principal's decision, the grievance may be advanced to Level 3 by requesting in writing that the Director of Elementary Programs or the Director of Secondary Programs review the principal's decision. This request must be submitted to the appropriate Director within 15 days of the principal's decision.

If the complaint alleges a violation of ~~Title IX~~, Title II, Section 504 of the Rehabilitation Act, or a violation of Title IX other than sexual misconduct harassment, the principal shall turn the complaint over to the Nondiscrimination Coordinator who shall investigate the complaint. The District has appointed Nondiscrimination Coordinators to assist in the handling of discrimination complaints. The Coordinator will complete the investigation and file the report with the appropriate Director within 30 school business days after receipt of the written grievance. The Coordinator may hire an outside investigator if necessary. If the Director agrees with the recommendation of the Coordinator, the recommendation will be implemented. If the Director rejects the recommendation of the Coordinator, and/or either party is not satisfied with the recommendations from Level 2, either party may make a written appeal within 15 days of receiving the report of the Coordinator to the Superintendent.

Level 3: Director of Elementary or Secondary Programs

Upon receipt of the request for review, the Director shall schedule a meeting between the parties and the principal. The parties shall be afforded the opportunity to either dispute or concur with the principal's report. The Director shall decide the matter within 10 days of the meeting and shall notify the parties in writing of the decision. If the Director agrees with the recommendation of the principal, the recommendation will be implemented. If the Director rejects the recommendation of the principal, the matter may either be referred to an outside investigator for further review or resolved by the Superintendent.

If either party is not satisfied with the decision of the Director, the Superintendent is the next avenue for appeal. A written appeal must be submitted to the Superintendent within 15 days of receiving the Director's decision. The Board is the policy-making body of the school, however, and appeals to that level must be based solely on whether or not policy has been followed. Any individual appealing a decision of the Superintendent to the Board bears the burden of proving a failure to follow Board policy.

Level 4: Superintendent

Upon receipt of the request for review, the Superintendent shall schedule a meeting between the parties and the principal. The parties shall be afforded the opportunity to either dispute or concur with the principal's report. The Superintendent shall decide the matter within 10 days of the meeting and shall notify the parties in writing of the decision. If the Superintendent agrees with the recommendation of the principal, the recommendation will be implemented. If the Superintendent rejects the recommendation of the principal, the matter may either be referred to an outside investigator for further review or resolved by the Superintendent.

If either party is not satisfied with the decision of the Superintendent, the Board is the next

avenue for appeal. A written appeal must be submitted to the Board within 15 days of receiving the Superintendent's decision. The Board is the policy-making body of the school, however, and appeals to that level must be based solely on whether or not policy has been followed. Any individual appealing a decision of the Superintendent to the Board bears the burden of proving a failure to follow Board policy.

Level 5: The Board

Upon receipt of a written appeal of the decision of the Superintendent, and assuming the individual alleges a failure to follow Board policy, the matter shall be placed on the agenda of the Board for consideration not later than their next regularly scheduled meeting. A decision shall be made and reported in writing to all parties within 30 days of that meeting. The decision of the Board will be final.



Cross References:	3085 Sexual Harassment, Discrimination and Retaliation Policy
	3085P Title IX Sexual Harassment Grievance Procedure, Requirements and Definitions
	5800 Classified Employment, Assignment, and Grievance
	5800P Classified Employee Grievance
	5900 Collective Bargaining Agreement

Procedure History

ADOPTED: 8/11/14
ISBA 2013
REVISED: 12/14/15
9/12/16
11/11/19

Uniform Grievance Report Form

(Please keep your presentation to one sheet. Thank you.)

Name: _____ Date _____

Mailing Address: _____

Phone Number(s): _____

Subject:

Problem:

Examples that validate the problem:

Results:

Suggested Solutions:

Response to Concern

If the complaint pertains to sexual harassment or sexual misconduct, the concern should be remanded to the Title IX Coordinator to address in accordance with Policy 3085.

Person Responding _____ Response Date _____

Method used to communicate response: _____

Actions taken to investigate concern: _____

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People contacted in gathering information upon which to make decision: _____

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Findings of investigation: _____

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Decision: _____

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Results of communicating the decision: _____

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Signature

According to the Equal Employment Opportunity Commission, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, including unwanted touching, verbal comments, sexual name-calling, gestures, jokes, profanity, and spreading of sexual rumors.

The District shall do everything in its power to provide employees an employment environment free of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting sexual harassment, as defined and otherwise prohibited by state and federal law. In addition, Principals and Supervisors are expected to take appropriate steps to make all employees aware of the contents of this policy. A copy of this policy will be given to all employees.

District employees shall not make sexual advances or request sexual favors or engage in any conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of substantially interfering with the individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment prohibited by this policy includes verbal or physical conduct. The terms "intimidating", "hostile", or "offensive" include, but are not limited to, conduct which has the effect of humiliation, embarrassment, or discomfort. Sexual harassment will be evaluated in light of all of the circumstances.

Aggrieved persons who feel comfortable doing so, should directly inform the person engaging in sexually harassing conduct or communication, that such conduct or communication is offensive and must stop.

Employees who believe they may have been sexually harassed or intimidated should address the matter as described in Policy 3085 and Procedure 3085P ~~contact the Title IX coordinator or an administrator, who will assist them in filing a complaint.~~ An individual with a complaint alleging a violation of this policy which does not fall within the scope of Policy 3085 and Procedure 3085P shall follow the Uniform Grievance Procedure.

Investigation

If an allegation of sexual harassment is found to not fall within the scope of Policy 3085 and Procedure 3085, but still claims conduct which violates this policy, ~~When an allegation of sexual harassment is made of any employee,~~ the designated school officials will take immediate steps

to: (1) Protect the grievant from further harassment; (2) Discuss the matter with and obtain a statement from the accused and his representative, if any; (3) Obtain signed statements of witnesses; (4) Prepare a report of the investigation.

Confidentiality. Due to the damage that could result to the career and reputation of any person falsely or in bad faith accused of sexual harassment, all investigations and hearings surrounding such matters will be designed to the maximum extent possible to protect the privacy of, and minimize suspicion towards, the accused as well as the complainant. Only those persons responsible for investigating and enforcing this policy will have access to confidential communications, unless otherwise required by Policy 3085 or Procedure 3085P. In addition, all persons involved in an allegation which falls within the scope of this policy, and not within the scope of 3085 or 3085P are prohibited from discussing the matter with co-workers and/or other persons not directly involved in resolving the matter.

A violation of this policy may result in discipline, up to and including discharge. Any person making a knowingly false accusation regarding sexual harassment will likewise be subject to disciplinary action, up to and including discharge.



Cross Reference:	4120	Uniform Grievance Procedure
	3085	Sexual Harassment, Discrimination and Retaliation Policy
	3085P	Title IX Sexual Harassment Grievance Procedure, Requirements and Definitions

Legal Reference: Title VII of the Civil Rights Act,
42 U.S.C. §§ 2000(e), et seq.,
29 C.F.R. § 1604.11 Title IX of Education Amendments,
20 U.S.C. §§ 1681, et seq.
I.C. § 67-5909 Acts Prohibited

Policy History
ADOPTED: 8/11/14
ISBA
REVISED:

This policy shall apply to all staff, contractors, and volunteers who have contact with students.

For the purposes of this policy, sexual misconduct is defined as any sexual activity directed at a student, regardless of age, with the purpose of developing a romantic or sexual relationship. It includes activities that are:

1. Physical and non-physical;
2. Conducted in person or through other modes of communication;
3. Conducted before, during, or after school;
4. On District property or elsewhere; and
5. Legal and illegal.

Illegal sexual misconduct is characterized by sexual contact between an adult and a child under the age of 18 and includes explicit sexual conduct, solicitation of a minor child to participate in a sexual act, sexual exploitation and dissemination of sexual material harmful to minors. Sexual misconduct also includes such inappropriate verbal conduct as sexual comments or questions, jokes, taunting, and teasing and such inappropriate physical conduct as kissing, hair stroking, tickling, and frontal hugging.

Sexual misconduct is prohibited. Staff and volunteers who engage in sexual misconduct shall be subject to disciplinary activity, including termination. They may also be reported to law enforcement and/or the Department of Health and Welfare, as described in Policy 5260.

To avoid the appearance of impropriety, staff should avoid singling students out for personal attention such as frequent hugging or other physical contact, the giving of gifts, frequent compliments directed toward a particular student, overly personal cards, notes, or electronic communications, or teasing that references gender or contains sexual innuendo. Staff should take reasonable measures to avoid being alone with any student unless there is a legitimate, work-related need to be alone with the student. In cases such as before or after school tutoring, teachers may ask another teacher to be present in the classroom, or such tutoring may be conducted in a less private area with other adults present, such as in the school library.

The District recognizes that some student interactions occur outside the classroom. School employees and volunteers should avoid the appearance of impropriety by refraining from the following behavior:

1. Conducting ongoing, private conversations with individual students that are unrelated to school activities or the well-being of the student and take place in locations inaccessible to others;
2. Inviting a student or students for home visits without informing parents;
3. Visiting the homes of students without the knowledge of parents;
4. Inviting students for social contact off school grounds without the permission or knowledge of the parents; and

5. Transporting students in personal vehicles without the knowledge of parents or supervisors.

Reporting Sexual Misconduct

Any staff member, contractor, or volunteer who has reasonable cause to believe a staff member, contractor, or volunteer has engaged in misconduct or that any other adult has engaged in sexual misconduct on District property or at a District event shall report the misconduct to his or her supervisor, who shall notify the Superintendent or the Superintendent's designee. The matter shall be investigated in accordance with Policy ~~3290~~ 3085 and Procedure 3085P. Investigation of any report of sexual misconduct shall include an investigation of whether the incident constitutes a violation of Title IX. Sexual misconduct which does not fall within the definition of sexual harassment provided in Procedure 3085P may still result in disciplinary action up to and including dismissal.

~~The incident shall also be reported to the District Title IX Coordinator to be investigated and addressed in the same manner as a report of sexual harassment.~~

The individual with reasonable cause to believe sexual misconduct has occurred shall also report the incident in accordance with Policy 5260, if applicable.

False Reports

Making a knowingly false report of sexual misconduct is prohibited and may result in the termination of a staff member or volunteer who makes such a report or in the suspension or expulsion of a student who makes such a false report.

Distribution of Policy and Training

This policy shall be posted on the District website and provided to all new employees upon hiring and to all volunteers. The employee or volunteer shall sign an acknowledgment, to be retained by the District, indicating that they have received and reviewed a copy of this policy.

The District shall provide training on preventing and reporting sexual misconduct to all staff who have contact with students.



Cross References:	3085	Sexual Harassment, Discrimination and Retaliation Policy
	3085P	Title IX Sexual Harassment Grievance Procedure, Requirements and Definitions
	3290	Sexual Harassment and Intimidation of Students
	5240	Sexual Harassment and Sexual Intimidation in the Workplace
	5260	Abused and Neglected Child Reporting
	5280	Professional Standards Commission (PSC) Code of Ethics
	5325	Employee Use of Social Media Sites Including Personal Sites

Legal References: 20 U.S.C. § 1681, et seq.

Title IX of the Educational Amendments of 1972

Other References: US Department of Education: Office of Safe and Healthy Students Readiness and Emergency Management for Schools (REMS) Technical Assistance (TA) Center
A Training Guide for Administrators and Educators on Addressing Adult Sexual Misconduct in the School Setting, Readiness and Emergency Management for Schools (March, 2017) (available at <https://rems.ed.gov/docs/ASMTrainingGuide.pdf>).

Policy History

ADOPTED: 11/11/19

ISBA

REVISED:

It is the policy of this district to promote a safe work environment for all employees and to take reasonable preventative measures to avoid accidents or injuries to employees. To that end, this policy directs the Board to create and adopt a detailed Safety Management Program compliant with the material requirements of the Occupational Safety and Health Act of 1970 (OSHA). District personnel are required, as a condition of their employment, to utilize safe work practices.

While the District will take steps reasonably necessary to implement the Safety Management Program, the Board recognizes that the employees are the “first line of defense” against safety violations, and requires them to use their best judgement to prevent the kinds of avoidable or reasonably foreseeable accidents contemplated by the Safety Management Policy.

Finally, the Board (by way of this policy and Policy 9400) shall interpret any violation of the Safety Management Policy by any employee as necessarily and categorically outside the course and scope of the violating employee’s employment with the District.

All District Employees

Inclusive of the provisions of the Safety Management Program, all District employees are required to use reasonable caution and analyze all work assignments and the work environment for potential hazards. Employees shall:

1. Follow specific safety instructions described in the District Safety Management Program;
2. Utilize their best judgement when evaluating potential safety concerns posed by any instructions that may be given to them by their supervisor;
3. Act safely in daily activities and at no time do anything they reasonably expect could result in an accident or injury to themselves or others;
4. Be responsible for their own safe conduct and do everything reasonably possible to safeguard others, unless doing so would unreasonably place the employee in peril;
5. Be alert to any potentially or actually unsafe conditions and report them immediately to their supervisor or the building principal;
6. Use all articles of safety equipment provided in a way that strictly complies with the manufacturers’ instructions, suggested uses, and/or established industry best practices;
7. Take good care of any tools, equipment, or vehicles and report any needed repair or replacement necessary for safe use;
8. Not attempt to operate, repair, or otherwise use tools, equipment, machinery, vehicles without specific authorization, and not attempt any of the same without the requisite expertise and training necessary for competent use of that article or tool;
9. Not tamper with, attempt to tamper with, or alter any tool, equipment, vehicle, or other piece of machinery in a way contrary to or likely to be contrary to its intended use.

Maintenance and Food Service Employees

All maintenance, transportation, and food service employees shall comply with the following, additional safety standards as well as any others outlined in the District Safety Program:

1. Dress appropriately for the job, for instance, by wearing closed toe, non-slip shoes and refraining from wearing loose fitting clothing or jewelry;
2. Wear appropriate personal protection equipment as instructed;
3. When handling or moving heavy objects, take precautions to avoid injury, including but not limited to using proper lifting techniques;
4. Use chemicals and other products in strict compliance with manufacturer's instructions;
5. Comply with state and federal requirements regarding food safety.

Supervisors

Supervisors are required to provide a safe work environment for employees and to enforce standards as set forth in this policy. Supervisors shall:

1. Ensure that all employees understand and observe safe work practices and procedures;
2. Instruct current and new employees on safe work procedures and emphasize specific job hazards and how to avoid them;
3. Inspect work areas; observe employees performing daily tasks; and determine unsafe work habits, conditions, and general housekeeping in the work area;
4. Report immediately to the administration any unsafe conditions beyond their ability to correct or cure, or which they suspect could develop into an unsafe condition beyond their ability to correct or cure;
5. Investigate and submit a complete report of any accident or injury within 24-hours;
6. Determine the cause of each accident and take corrective action;
7. Evaluate employee performance for the ability to correct workplace safety issues.

Disciplinary Action

Supervisors shall take necessary disciplinary measures to ensure safety rules and safe work practices and procedures are not violated. In any situation constituting a potential or foreseeable threat to health and safety, or comprising an actual violation of the District's building safety policy, any employee responsible shall be made aware that the District will not tolerate nor be held liable for unsafe conduct by an employee. Situations necessitating supervisor intervention under this policy section may include, but are not limited to:

1. Accidents resulting from failure to abide by the provisions of the District Safety Program;
2. Failure to use available personal protective equipment;
3. Failure to use proper lifting techniques;
4. Failure to observe hazardous footing conditions; and
5. Misuse of equipment.

In situations where there is a willful, reckless, or negligent disregard for safety rules or the employee fails to accept and follow safe work practices, disciplinary action will be undertaken, up to and including termination of employment.

Cross Reference: 9400

Legal References: Occupational Safety and Health Act of 1970 (OSHA)
I.C. § 33-506 Organization and Government of Board of Trustees
I.C. § 33-512 Governance of Schools

Policy History:

Adopted on:

Revised on:

Reviewed on:

Classified employees may file a written grievance alleging a violation of current, written District approved policy, procedure, or employee handbook, a condition or conditions that jeopardize the health or safety of the employee or another, or tasks assigned outside of the employee's essential job functions, and for which the employee has no specialized training in strict accordance with the procedure set forth herein. For the purposes of this procedure, current written District policy means the policy in place and approved by the Board as of the date of the incident giving rise to the grievance and not any previous or subsequent policy.

Neither the rate of pay nor the decision to terminate an employee during the initial one hundred eighty (180) days of employment shall be regarded as a proper grievable matter.

A classified employee filing a grievance pursuant to this procedure shall be entitled to a representative of their choosing at each step of the grievance process outlined herein. Additionally, the person against whom the grievance is filed and the Superintendent or the Superintendent's designee shall be entitled to a representative at each step of the grievance process outlined herein. None of these individuals will be qualified to sit on the advisory grievance panel.

Neither the Board nor any member of the administration shall take reprisals affecting the employment status of any party in interest. The employee filing a grievance shall not take any reprisals regarding the course of the outcome of the grievance nor take any reprisals against any party or witness participating in the grievance.

Level 1: Informal

A classified employee with a complaint is encouraged to first discuss it with their immediate supervisor with the objective of resolving the matter promptly and informally. An exception is that complaints of sexual harassment should be **addresses as described in Policy 3085 and Procedure 3085P.** ~~discussed with the first line administrator that is not involved in the alleged harassment or with the Title IX coordinator or administrator.~~

Level 2: Administration

If the complaint is not resolved at Level 1, the grievant may file a written grievance stating:

1. The nature of the grievance; and
2. The remedy requested.

It must be signed and dated by the grievant. The Level 2 written grievance must be filed with the District's Human Resources Director within six (6) working days of the event or incident giving rise to the grievance.

Within six (6) working days of receipt of the grievance, the District's Human Resources Director shall schedule an informal grievance meeting with the grievant, the employee against whom the grievance is filed, any known advocates, as well as a District administrator who will not be

involved in the statutory grievance process. The purpose of the meeting shall be to attempt to find a resolution to the employee grievance.

If the complaint alleges a violation of Title IX, Title II, Section 504 of the Rehabilitation Act, or sexual harassment that is found to not fall within the scope of Policy 3085 and Procedure 3085P, the person who received the written grievance shall turn the complaint over to the Title IX coordinator who shall investigate the complaint. The District has appointed a Title IX coordinator to assist in the handling of discrimination complaints. The coordinator will complete the investigation and file the report with the Superintendent within thirty (30) days after receipt of the written grievance. The coordinator may hire an outside investigator if necessary. If the Superintendent agrees with the recommendation of the coordinator, the recommendation shall be implemented. If the Superintendent rejects the recommendation of the coordinator, and/or either party is not satisfied with the recommendations from Level 2, either party may make a written appeal within fifteen (15) days of receiving the report of the coordinator to the Board for a hearing.

Level 3: Superintendent

If a resolution is not reached during the informal grievance meeting, the individual against whom a grievance is filed shall file a written response to the employee grievance within six (6) working days after the conclusion of the informal grievance meeting. Thereafter, the employee may appeal the grievance to the Superintendent or the Superintendent's designee within six (6) working days of the receipt of the written response or within six (6) working days from the date the written response was due if the classified employee received no written response. Within six (6) working days of an appeal, the Superintendent or designee shall provide a written response to the employee.

Level 4: Hearing Panel

If the classified employee is not satisfied with the decision of the Superintendent or the Superintendent's designee or there is no response from the Superintendent or the Superintendent's designee, the employee may request a review of the grievance by a hearing panel within six (6) working days of the response or lack thereof. A written appeal must be submitted to the Board, and within ten (10) working days of receiving the appeal the Board shall convene a hearing panel consisting of three (3) persons; one (1) to be selected by the Board, one (1) to be selected by the employee and one (1) to be mutually agreed upon by the two (2) appointed members of the panel. The panel shall submit its decision in writing to the employee, the Superintendent, and the Board within ten (10) working days of completing its review.

Level 5: The Board

The panel's decision shall be final unless the Board overturns the panel's decision by resolution at the Board's next regularly scheduled public meeting. The decision of the Board will be final, unless appealed within forty-two (42) calendar days of the Board's resolution to overturn the panel's decision in the district court in the county in which the School District is located.



Procedure History

ADOPTED: 10/13/14

ISBA

REVISED: 6/13/16

In compliance with Idaho Code, the Board of Trustees establishes the following guidelines to provide administrative direction pertaining to the retention and/or disposal of District records. This schedule likewise identifies the anticipated physical location of where such records may be kept or maintained by the District, in addition to the possible document retention of all categories of records on the school's servers and computer systems.

The District's Public Records Coordinator (Board Clerk), in conjunction with the Superintendent, or designee, is responsible for the maintenance, safeguarding and destruction of the District's records. Performance of such duties shall be in cooperation with the District's Business Office, Director of Maintenance and Transportation, Technology Coordinator, the Principals at the school's buildings and other administrative personnel employed by the District. However, each school employee is likewise responsible for having knowledge of this policy and the requirement to safeguard the District's records, electronic or otherwise, consistent with the chart below.

The District's Public Records Coordinator shall work in conjunction with the District's Technology department to assure that the school's staff is aware of the routine destruction of electronic District records, including emails, such that they are able to assure that the District's public records are retained consistent with this schedule, regardless of whether they are maintained in a hard copy or an electronic copy. In such a process, the District's employees need to retain District records included on the schedule below, particularly student educational records, personnel records, and investigative records, in a format that is not part of the District's routine electronic records destruction and/or notify the technology personnel of the District that a particular document is not to be destroyed as part of the routine destruction of electronic records.

Unless otherwise prohibited by applicable law, all District records may be maintained electronically and/or in hard physical copy.

Method of Destroying Official Records

The District's official records, and any copy thereof that may be deemed to be confidential and/or not intended to be disseminated to the public, will be shredded before disposal.

Destruction of Electronic Mail/e-mail

The District will store electronic mail/e-mails for a minimum period of 500 days. All email not otherwise maintained in the employee's email account will be automatically deleted from the District's system at the end of this retention period. It is the responsibility of every district employee to assure that District documents that need to be retained for a longer period of time due to federal law, state law or the provisions of this policy are retained accordingly and in a

different format than electronic mail. An employee’s failure to retain District documents accordingly could serve as a basis for discipline, up to and including possible termination.

Suspending of Destroying Official Records

The District will immediately cease the destruction of all relevant records, including electronic records, even if destruction is authorized by an approved Retention Schedule, for the following reasons:

1. If the District receives a **Public Records Freedom of Information Act (FOIA)** request;
2. If the District believes that an investigation or litigation is imminent; or
3. If the District is notified that an investigation or litigation has commenced.

The Public Records Coordinator, Superintendent, and Board Clerk are responsible for carrying out this policy.

If relevant records exist in electronic formats (such as email, digital images, word processed documents, databases, backup tapes, etc.) the District’s Administrative personnel shall notify its information technology staff to cease the destruction of records relating to the subject matter of the suit/potential suit or investigation. Failure to cease the destruction of relevant records could result in penalties against the District.

District records shall be retained and/or disposed of as follows:

DISTRICT RECORDS RETENTION SCHEDULE

Retention Codes		
AC —After closed, terminated, completed, expired, settled, or last date of contact FE —Fiscal Year End (June 30 th)	LA —Life of Asset PM —Permanent US —Until Superseded	DO – District Office SB – School Buildings DM – District Maintenance DT – District Transportation
RECORDS DESCRIPTION	RETENTION PERIOD	
ADMINISTRATION —ATTENDANCE—ANNUAL ATTENDANCE SUMMARIES BY BUILDING	PM	DO, SB
ADMINISTRATION —ATTENDANCE—Enrollment attendance data	3 years	DO, SB
ADMINISTRATION —BALLOTS AND OATHS OF ELECTION—until canvassed and recorded in the minutes	Not less than 8 months following election	DO
ADMINISTRATION —BALLOTS FOR BOND ELECTIONS	a. Not less than 60 days after bonds have been delivered to purchaser b. Not less than 8 months following bond election	DO
ADMINISTRATION —CONTRACTS AND LEASES	AC +6 years	DO

DISTRICT RECORDS RETENTION SCHEDULE

Retention Codes		
<p>AC—After closed, terminated, completed, expired, settled, or last date of contact</p> <p>FE—Fiscal Year End (June 30th)</p>	<p>LA—Life of Asset</p> <p>PM—Permanent</p> <p>US—Until Superseded</p>	<p>DO – District Office</p> <p>SB – School Buildings</p> <p>DM – District Maintenance</p> <p>DT – District Transportation</p>
RECORDS DESCRIPTION	RETENTION PERIOD	
ADMINISTRATION —GENERAL CORRESPONDENCE	3 years	DO, SB
ADMINISTRATION —DONATION/GIFT RECORDS	PM	DO, SB
ADMINISTRATION —BOARD MEETINGS—AGENDA AND MINUTES: Official minutes and agenda of open meetings	PM	DO
ADMINISTRATION —BOARD MEETINGS—CLOSED: Certified agendas or tape recordings of closed meetings	PM—Restricted Access	DO
ADMINISTRATION —ORGANIZATION CHARTS: Any documentation that shows program accountability	PM	DO, SB, DM, DT
ADMINISTRATION —EDUCATION PROGRAM REVIEW RECORDS	AC+3 years	DO, SB
ADMINISTRATION —OFFICIAL STATE DEPARTMENT REPORTS	PM	DO
ADMINISTRATION —SCHOOL CERTIFICATION REPORTS	PM	DO
ANNUAL REPORTS	PM	DO
APPEAL AND REVIEW RECORDS —Records may include but are not limited to narrative history or description of appeal; minutes and testimony; exhibits; reports and findings of fact; final orders, opinions, conclusions, or decisions; audio recordings; hearing schedules and lists of participants; and related correspondence and documentation.	PM	DO
BOARD MEMBER RECORDS —Series documents board activities and serves as a reference source for board members. Records may include but are not limited to correspondence, plans, statements of goals and objectives, minutes, committee reports, budgets, financial statements, reports, and other reference material. Records are often compiled in a notebook for each member.	AC+3 years NOTE: Some materials may warrant long-term retention. These materials should be reviewed for archival materials.	DO
BOARD RECORDS —Series documents the official proceedings of the board meetings. Records may include agendas; minutes; meeting notices; items for board action; contested case hearings schedules; committee reports; exhibits; and related correspondence and documentation. Records may also include audio recordings of meetings used to prepare summaries.	PM	DO

COMPUTER SYSTEMS-BACKUPS —Backups on tape, disk, cd, dvd, etc. CAUTION: Records stored in this format can be subpoenaed during litigation.	US or 1 year	DO
EQUIPMENT-HISTORY FILE —Equipment service agreements, includes maintenance agreements, installation, and repair logs, etc.	LA+3 years	DO, DM, DT
EQUIPMENT MANUALS —Instruction and operating manuals	LA	DO, SB, DM, DT
EQUIPMENT WARRANTIES	AC+1 year	DO, SB, DM, DT
FACILITIES OPERATIONS-APPRAISALS — Building or property	3 years	DO
FACILITIES OPERATIONS-BUILDINGS PLANS AND SPECIFICATIONS —Includes architectural and engineering drawings, etc.	PM For leased structures retain AC+2 years	DO, DM
FACILITIES OPERATIONS-BUILDINGS, CONSTRUCTION CONTRACT, INSPECTION RECORDS AND PROJECT FILES —Building construction contracts, surety bonds and inspection records, Planning, design, construction records & all bids, etc.	LA	DO, SB, DM
FACILITY OPERATIONS—DAMAGE REPORTS; LOST AND STOLEN PROPERTY REPORTS	FE+3 years	DO, SB, DM, DT
FACILITY OPERATIONS-PROPERTY DISPOSAL RECORDS —Documenting disposal of inventoried property	PM	DO
FACILITY OPERATIONS-PROPERTY MANAGEMENT SEQUENTIAL NUMBER LOGS — Property logs	US+3 years	DO, SB, DM
FACILITY OPERATIONS-SECURITY ACCESS RECORDS —Documents the issuance of keys, identification cards, passes, passwords, etc.	AC+2 years AC=Until superseded, date of expiration or date of termination, whichever is sooner	DO, SB, DM
FACILITY OPERATIONS-SURPLUS PROPERTY SALE REPORTS	PM	DO, DM
FACILITY OPERATIONS-UTILITY USAGE REPORTS	1 year	DO, DM
FACILITY OPERATIONS-VEHICLE OPERATION LOGS	1 year	DO, DT
FISCAL-ACCOUNTS PAYABLE/RECEIVABLE LEDGERS	FE+3 years	DO, SB
FISCAL-ANNUAL FINANCIAL REPORTS	PM	DO, SB, DM, DT
FISCAL-ANNUAL OPERATING BUDGETS	FE+3 years	DO, SB, DM, DT
FISCAL-APPROPRIATION REQUESTS —Includes any supporting documentation in the appropriation request	FE+3 years	DO, SB, DM, DT
FISCAL-FINAL AUDIT REPORTS	PM	DO, SB
FISCAL-BANK STATEMENTS	FE+3 years	DO, SB
FISCAL-CANCELLED CHECKS — Stubs/Warrants/Drafts	FE+3 years	DO, SB
FISCAL-CAPITAL ASSET RECORDS	LA+3 years	DO, SB, DM, DT
FISCAL-CASH RECORDS —Cash deposit slips; cash receipts log	FE+3 years	DO, SB
FISCAL-DEEDS AND EASEMENTS —Proof of ownership and right-of-way on property	PM	DO

FISCAL -detail chart of accounts—One for all accounts in use for a fiscal year	FE+3 years	DO, SB
FISCAL -EXPENDITURE JOURNAL OR REGISTER	FE+3 years	DO, SB
FISCAL -EXPENDITURE VOUCHERS—Travel, payroll, etc.	FE+3 years	DO, SB, DM, DT
FISCAL -EXTERNAL REPORTS—Special purpose, i.e. federal financial reports, salary reports, etc.	FE+3 years	DO, SB, DM, DT
FISCAL -FEDERAL TAX RECORDS—Includes FICA records	AC+4 years AC=Tax due date, date the claim is filed, or date tax is paid whichever is later	DO
FISCAL -FEDERAL FUNDING RECORDS—Title I; Chapter 2; Title VI-B	FE+5 years Or until all pending audits or reviews are completed	DO
FISCAL —FEDERAL—USDA	AC+3 years AC=submission of final expenditure	DO
FISCAL -GENERAL LEDGERS; GENERAL JOURNAL VOUCHERS	FE+3 years	DO, SB
FISCAL -GRANTS—State and Federal	AC+3 years AC=End of grant or satisfaction of all uniform administrative requirements for the grant CAUTION: Retention requirements may vary depending on the specific federal funding agency	DO, SB
FISCAL -INSURANCE CLAIM FILES	AC+3 years AC=Resolution of claim	DO
FISCAL -INSURANCE POLICIES—all types	AC+5 years AC=expiration or termination of policy according to its terms	DO
FISCAL -LONG-TERM LIABILITY RECORDS—Bonds, etc.	AC+4 years AC=retirement of debt	DO
FISCAL -RECEIPTS JOURNAL OR REGISTER	FE+3 years	DO, SB, DM, DT
FISCAL -RECONCILIATIONS	FE+3 years	DO, SB
FISCAL -REIMBURSABLE ACTIVITIES—Requests & approval for reimbursed expenses for travel, training, etc.	FE+3 years	DO, SB
FISCAL -RETURNED CHECKS—Uncollectable warrants or drafts	AC+3 years AC=After deemed uncollectible	DO, SB
FISCAL -SIGNATURE AUTHORIZATIONS—Records authorizing an employee to initiate financial transactions for agency. Also, spending authority limits	US+FE+3 years	DO
LEGAL -LITIGATION FILES--	PM CAUTION: May contain attorney-client privileged information	DO, SB, DM, DT

LEGAL-OPEN RECORDS REQUESTS —documentation relating to approved or denied requests for records under Idaho Public Records Law	PM	DO
LEGAL-OPINIONS AND ADVICE —Does not include legal opinions or advice rendered on a matter in litigation or with regard to pending litigation	PM CAUTION: May contain attorney-client privileged information	DO, SB
INSTRUCTIONAL —Distance learning instruction that is recorded by the District. Such recording is not required by this policy.	Until the end of the semester	Electronic
NEWS OR PRESS RELEASES	PM	DO, SB
PERSONNEL-ACCUMULATED LEAVE ADJUSTMENT REQUEST —Used to create and adjust employee leave balances	FE+5 years	DO, SB, DM, DT
PERSONNEL-APPLICATIONS FOR EMPLOYMENT—HIRED —Applications, etc. required by employment advertisement	AC+5 years AC=Termination of employment	DO, SB, DM, DT
PERSONNEL-APPLICATIONS FOR EMPLOYMENT—NOT HIRED —Applications, resumes, etc. required by employment advertisement	AC+2 years AC=Date position is filled	DO, SB, DM,DT
PERSONNEL-BENEFIT PLANS	US+5 years	DO
PERSONNEL-COMPLAINT RECORDS —Complaints received and records documenting their resolution	FE+3 years CAUTION: If a complaint becomes the subject of litigation, it is subject to a longer retention period	DO, SB, DM, DT
PERSONNEL-CORRECTIVE ACTION —those actions which do not affect pay, status or tenure and are imposed to correct or improve job performance	PM CAUTION: If during the retention period these records are used to support personnel disciplinary action, the records should be retained according to Personnel Disciplinary Action series.	DO, SB, DM, DT
PERSONNEL-DISCIPLINARY ACTION DOCUMENTATION —those actions that affect pay or status. They include demotion, dismissal, etc.	PM	DO, SB, DM, DT
PERSONNEL-EMPLOYEE STATEMENTS (Affidavits) —for insurance, personnel or other uses for which Administration has sought such statements	PM	DO, SB, DM, DT
PERSONNEL-EMPLOYEE BENEFITS —documents relating to selection of benefits other than insurance	US+ 5 years	DO
PERSONNEL-EMPLOYEE COUNSELING RECORDS —Notes, etc. relating to job-specific counseling	PM	DO, SB, DM, DT
PERSONNEL-EMPLOYEE DEDUCTION AUTHORIZATIONS —documents relating to all deductions of pay	AC+5 years AC=After termination of employee or after amendment, expiration or termination of authorization, whichever is sooner.	DO
PERSONNEL-EMPLOYEE EARNINGS RECORDS	PM	DO
PERSONNEL-EMPLOYEE INSURANCE RECORDS —District copy of selection records by employees of insurance offered by the District	US+ 5 years	DO

PERSONNEL-EMPLOYEE RECOGNITION RECORDS —Awards, incentives, etc.	PM	DO, SB, DM, DT
PERSONNEL-EMPLOYMENT ANNOUNCEMENT	2 years	DO
PERSONNEL-EMPLOYMENT CONTRACTS	Original dates of hire +50 years	DO
PERSONNEL-EMPLOYMENT ELIGIBILITY —Documentation or verification of Federal report form INS I-9	PM	DO
PERSONNEL-EMPLOYMENT SELECTION RECORDS —all records that document the selection process: i.e. polygraph, physicals, interview notes, etc.	2 years CAUTION: Does not include criminal history checks	DO, SB, DM, DT
PERSONNEL-FORMER EMPLOYEE VERIFICATION RECORDS —minimum information includes name, social security number, exact dates of employment and last known address	PM	DO
PERSONNEL-GRIEVANCE RECORDS —review of employee grievances against policies and working conditions, etc. Includes record of actions taken.	PM	DO, SB, DM, DT
PERSONNEL-HIRING PROCESS—CRIMINAL HISTORY CHECKS —criminal history record information on job applications	PM	DO
PERSONNEL-JOB PROCEDURE RECORD/JOB DESCRIPTION —any document detailing duties of positions on position-by-position basis	US+8 years	DO, SB, DM, DT
PERSONNEL-LEAVE STATUS REPORT —cumulative report for each pay cycle showing leave status	FE+3 years	DO
PERSONNEL-LIABILITY RELEASE FORM —statements of employees, patrons, etc. who have released the district from liability	PM	DO
PERSONNEL-LICENSE AND DRIVING RECORD CHECK	PM	DO, DT
PERSONNEL-OVERTIME AUTHORIZATION & SCHEDULE	5 years	DO, SB, DM, DT
PERSONNEL-PAYROLL-DIRECT DEPOSIT APPLICATION/AUTHORIZATION	US+3 years	DO
PERSONNEL-PAYROLL-INCOME ADJUSTMENT AUTHORIZATION ---used to adjust gross pay, FICA, retirement or compute taxes	US+3 years	DO
PERSONNEL-PERFORMANCE EVALUATION	PM	DO, SB, DM, DT
PERSONNEL-PERSI ENROLLMENT FILE	PM	DO
PERSONNEL-PERSI RECORD OF HOURS WORKED —Irregular help, half-time or greater	Date of hire +50 years	DO
PERSONNEL-PERSI TERMINATION RECORD	PM	DO
PERSONNEL-PERSONNEL INFORMATION —documents that officially change pay, titles, benefits, etc.	PM	DO
PERSONNEL-POLICY AND PROCEDURES MANUAL —any manual, etc. that establishes standard employment procedures	PM	DO, SB, DM, DT
PERSONNEL-RESUME-UNSOLICITED	1 year	DO, SB, DM, DT
PERSONNEL-SICK LEAVE POOL DOCUMENTATION —requests submitted, approvals, number of hours transferred in and out, etc.	LA+3 years	DO
PERSONNEL-TIME CARD AND TIME SHEET	PM	DO, SB, DM, DT

PERSONNEL-TIME OFF AND/OR SICK LEAVE REQUEST	FE+3 years	DO, SB, DM, DT
PERSONNEL-TRAINING AND EDUCATIONAL ACHIEVEMENT RECORD-INDIVIDUAL —records documenting training, testing or continued education	PM	DO, SB, DM, DT
PERSONNEL-UNEMPLOYMENT CLAIM RECORD	5 years	DO
PERSONNEL-UNEMPLOYMENT COMPENSATION RECORDS	AC+5 years	DO
PERSONNEL-W-2 & W-4 FORMS	5 years from date of termination	DO
PERSONNEL—WORKER’S COMPENSATION POLICIES	AC+10 years AC=expiration of policy	DO
PROCUREMENT-PERFORMANCE BOND —bonds posted by individuals or entities under contract with District	PM	DO
PROCUREMENT-PURCHASING LOG —Log, etc. providing a record of purchase orders issued, orders received, etc.	FE+3 years	DO, SB, DM, DT
PROCUREMENT-BID DOCUMENTATION —includes bid requisition/authorizations, invitation to bid, bid specifications, and evaluations	FE+3 years CAUTION: If a formal written contract is the result of a bid, etc., the bid and its supporting documentation must be retained for the same period as the contract.	DO, DM, DT
RECORDS MANAGEMENT —RECORDS RETENTION SCHEDULE; DISPOSITION LOG (listing records destroyed or transferred); CONTROL MATERIALS (indexes, card files, etc.); DESTRUCTION APPROVAL SIGN-OFFS	PM	DO, SB, DM, DT
SAFETY-ACCIDENT REPORTS	8 years* For Minors, 8 years after minor reaches age of 18	DO, SB, DM, DT
SAFETY-DISASTER PREPAREDNESS AND RECOVERY PLANS	PM	DO, SB, DM, DT
SAFETY-EVACUATION PLANS	PM	DO, SB
SAFETY-FIRE ORDERS —issued by fire marshal to correct deficiencies in compliance with the fire code	AC+3 years AC=deficiency corrected	DO, SB, DM
SAFETY-HAZARDOUS MATERIALS DISPOSAL RECORDS —Material safety data sheets must be kept for those chemicals currently in use that are affected by the Hazard Communication Standard in accordance with 29 CFR § 1910.1200(g).	PM	DO, DM
SAFETY-INCIDENT REPORTS —Reports concerning incidents which, upon investigation, were of a non-criminal nature	3 years (or 30 years*) *Exposure records require 30 year retention per 29 CFR § 1910.1020(d)(ii)(B)Footnote(1)	DO, SB, DM, DT
SAFETY-INSPECTION RECORDS —Fire, safety, and other inspection records of facilities and equipment	AC+3 years AC=Date of the correction of the deficiency, if the inspection report reveals a deficiency.	DO, SB, DM
SAFETY-MATERIAL DATA SAFETY SHEETS	30 years after the end of use of the substance	DO, DM
SAFETY-WORKPLACE CHEMICAL LISTS	30 years	DO, SB, DM

STUDENTS-EDUCATION RECORDS —Student’s name, birth date, <u>last address</u> , dates of attendance, graduation date and grades earned	PM	DO, SB
STUDENTS-SPECIAL EDUCATION RECORDS —educational records, including eligibility documentation and IEPs	FE+6 years	DO, SB
STUDENTS-MEDICAID RECORDS -claims, reimbursements, and supporting documentation	FE +5 years	DO, SB
VEHICLE-INSPECTION, REPAIR AND MAINTENANCE RECORDS	LA+1 year	DO, DT
VEHICLE-TITLE AND REGISTRATION	1 year	DO, DT
VOLUNTEER RECORDS —records may include recruitment and selection records, volunteer personnel and intern personnel information forms, intern agreements, volunteer and intern time records, emergency notification forms, insurance documentation and correspondence	AC+3 year AC=End of term of volunteer or intern	DO, SB
WEBSITE/WEB PAGES — INTERNET/INTRANET—system development documentation for initial setup; subsequent changes and content of pages	PM	DO, SB

In the event that District records do not correspond to any of the above listed categories, the Superintendent will determine the period of retention for a particular record.

Legal References: I.C. § 33-407 Return of Canvass of Elections
I.C. § 33-508 Duties of Clerk
I.C. § 33-701(8) Fiscal Year—Payment and Accounting of Funds
I.C. § 56-209h Administrative Remedies
I.C. § 74-119 Agency Guidelines
SDE Idaho Special Education Manual Revised 2009, Chapter 11, Section E
SDE Administrator’s Handbook 1.43
Federal Regulation
Idaho Records Management Guide, August, 2013

Policy History:

Adopted on: 8/11/14
Revised on: 1/11/16
10/10/16
11/11/19

All students shall submit to the reasonable rules of the District. Refusal to comply with written rules and regulations established for the governing of the school shall constitute sufficient cause for discipline, suspension, or expulsion.

For the purposes of the District's policies relating to corrective action or punishment:

1. In-School Suspension is the exclusion of the student from classroom participation but in attendance at school. The student would continue his/her school day under administrative monitoring by a staff member. In-school suspension is for a term not to exceed five (5) school days.
2. Temporary Suspension is the exclusion from school or individual classes for a specific period of up to five (5) school days.

The Superintendent or the principal of any school may temporarily suspend any pupil for disciplinary reasons, including student harassment, intimidation or bullying, or for other conduct disruptive of good order or of the instructional effectiveness of the school. Prior to suspending any student, the administration will conduct an informal conference on the reasons for the suspension and the opportunity to challenge those reasons with the student and/or parent/guardian. Any pupil who has been suspended may be readmitted to the school. The readmittance may be contingent on reasonable conditions prescribed by the Superintendent or principal. The Board of Trustees shall be notified of any temporary suspensions, the reasons for them, and the response to them.

- a. Only the Superintendent (or the Board) can extend an initial temporary suspension. The Superintendent may extend the suspension for an additional ten (10) school days
 - b. Only the Board ~~or their designee~~ can extend a temporary suspension for an additional five (5) days, beyond the additional ten (10) days added by the Superintendent, and only upon a finding that immediate return to school attendance by the temporarily suspended student would be detrimental the health and safety of other pupils.
3. "Expulsion" is the exclusion from school. Only the Board has the authority to expel or deny enrollment to any pupil who is a habitual truant, who is incorrigible, whose conduct is such to be continuously disruptive of school discipline or of the instructional effectiveness of the school, or whose presence is detrimental to the health and safety of other pupils or who has been expelled from another school district in the State of Idaho or any other state. The District will provide written notice of any student who is expelled or denied enrollment to the prosecuting attorney within five (5) days of the Board's actions.

No pupil shall be expelled nor denied enrollment without the Board of Trustees or their designee having first given written notice to the parent or guardian of the pupil stating the grounds for the proposed expulsion or denial of enrollment and the time and place where such parent or guardian may appear to contest the hearing. The hearing may only be contested on the basis that the parent feels the procedure was incorrect, incomplete, or in some manner inappropriate. The notice shall also state the rights of the pupil to be represented by counsel, to produce witnesses and submit evidence on his or her own behalf, and to cross-examine any adult witnesses who may appear against him or her. Within a reasonable period of time following such notification, the Board of Trustees shall grant the pupil and his or her parents or guardian a full and fair hearing in front of a hearing officer on the proposed expulsion. The administrator shall allow a reasonable period of time between notification and the hearing to allow the pupil and his or her parents or guardian to prepare their response to the charge.

If the parent wishes to appeal, an appeal hearing is set up with the Board and the parent is given a set of instructions outlining the procedure that will be covered in the appeal meeting. The Board is given the same document and the script within the document is followed. The intent of the appeal meeting is not to rehear all the details that led to the expulsion recommendation, but to determine whether the child received a fair and impartial hearing. See Procedure 3740P.

Except in extreme cases, students will not be expelled unless other forms of corrective action or punishment have failed, or unless there is good reason to believe that other forms of corrective action or punishment would fail if employed. Suspensions or expulsions shall be used only for instances of serious student misconduct.

Once a student is expelled in compliance with District policy, the expulsion shall be brought to the attention of appropriate local or state authorities, in order that such authorities may address the student's needs.

4. "Discipline" constitutes all other forms of corrective action or punishment, including brief exclusions from a class for not more than the remainder of the class period and exclusion from any other type of activity conducted by or for the District. Discipline shall not adversely affect specific academic grade, subject, or graduation requirements, as long as all required work is performed.
5. No student shall be expelled, suspended, or disciplined in any manner for any act not related to the orderly operation of the school or school-sponsored activities or any other aspect of the educational process.

Students with Disabilities

Students with disabilities may also be suspended under these same rules if the suspension will not constitute a change in placement. If a student with a disabling condition accrues ten (10) days suspension per year, the Child Study Team who has knowledge of the student's disabling condition will determine if there is causal relationship between the disabling condition and the student's misconduct. If such a relationship exists, the student's educational placement may not be changed without parental approval or a court order, pending a due process hearing under IDEA.

Likewise, before a recommendation on the expulsion of a disabled student is submitted to the Board, the Child Study Team must meet to determine if there is a causal relationship between the disabling condition and the student's misconduct.

When a disabled student is acting in such a way that he/she poses a danger to himself/herself or to another student or property, or substantially disrupts his/her educational program or that of other students, temporary suspension may take place. Temporary suspensions may not last longer than ten (10) school days. The principal shall convene the Team for reviewing the student's record before the student is readmitted to school no later than the tenth (10th) day of suspension.



Cross Reference: 3330 Student Discipline
3360 Discipline of Students with Disabilities
3370 Search and Seizure
3740P Student Expulsion/Denial of Enrollment

Legal Reference: 20 U.S.C. 1400, et seq. Individuals with Disabilities Education Act
I.C. § 33-205 Denial of school attendance
I.C. § 33-512 Governance of schools
I.C. § 33-1630 Requirements for Harassment, Intimidation, and Bullying
Information and Professional Development

Policy History

ADOPTED: 3/14/16

ISBA

REVISED: 4/13/20