



Title IX Regulation Study
Colorado Department of Education

March 27, 2023

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EXECUTIVE SUMMARY

Senate Bill 22-207, signed on June 7, 2022, required the Colorado Department of Education to contract with a third party to conduct a Title IX Regulation Study. In September 2022, The Colorado Department of Education contracted with TNG Consulting to complete a Title IX Regulation Study. The results of this study are divided into two parts: a report answering the questions posed in Senate Bill 22-207 and an analysis of key learning and themes from consultations with stakeholders.¹

The federal Title IX statute is comprised of only thirty-seven words, its requirements are constantly being shaped and interpreted by court decisions, federal regulations, and other federal guidance. Title IX was passed in 1972. Upon the formation of the U.S. Department of Education's Office for Civil Rights in 1990, it was tasked with the oversight of Title IX. During the years prior to 2011, most of the focus surrounding Title IX was on athletics and equitable access to education for all genders (guidance, case law, etc.). However, on April 4, 2011, the U.S. Department of Education's Office for Civil Rights issued a Dear Colleague Letter that changed this focus.² This letter provided significant guidance on the interpretations and procedures related to discrimination on the basis of sex to include sexual harassment, including sexual violence. This letter and its guidance changed the way educators addressed sexual harassment at the time. On May 19, 2020, the U.S. Department of Education codified the current iteration of Title IX regulations focusing on sexual harassment as a form of sexual discrimination.³ These regulations, effective August 14, 2020, were significantly different than the directives given in and since the 2011 Dear Colleague Letter. Today, there are new Title IX regulations on the horizon, with an expected release date of May 2023. These new regulations are expected to again change the policies and procedures that will need to be followed for sexual harassment and misconduct moving forward.⁴

The objective of this Regulation Study was to provide a response to the three directives set forth in Senate Bill 22-207. This objective was reached through guided interviews with identified stakeholders (to meet the consultation requirement), document review, and research on best practices in both Colorado and the United States.

Per Senate Bill 22-207, CDE initiated a Title IX regulation study by TNG Consulting, to examine:

- Best practices for prevention, notification, training, and responding to sex-based discrimination and harassment in public schools;
- The gaps between state and federal law regarding Title IX; and
- Whether Title IX regulations place limits on state law and whether the Colorado General Assembly may adopt more stringent standards in state statute.⁵

¹ Colorado SB22-207 – Prevention of Title IX Misconduct in Public Schools <https://leg.colorado.gov/bills/sb22-207>

² Dear Colleague Letter, April 4, 2011 <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>

³ 34 CFR 106 <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

⁴ The authors, if requested, will provide an update version of recommended policies to CDE after the publication of the new regulation.

⁵ Colorado SB22-207 – Prevention of Title IX Misconduct in Public Schools <https://leg.colorado.gov/bills/sb22-207>

After completion of the review the questions posed in SB 22-207 were answered as follows:

- A best practice for prevention of sex-based discrimination is to provide age-appropriate education to all students in K-12 schools.
- A best practice is to post notice as to how and who to notify at the school of sex-based discrimination very visibly in schools.
- A best practice for notification of sex-based discrimination and harassment in public schools is to have an online form for reporting.
- A case management system/database for sex-based discrimination and harassment concerns is a best practice.
- A best practice for training, regarding sex-based discrimination and harassment is to provide annual training to all K-12 staff. Beyond the required training in the Title IX regulations, all staff members should be provided supplemental training annually on Title IX, its implications, and how to support students through the Title IX process.
- There are no current gaps, contradictions, over or under extensions between state and federal law regarding Title IX, as it pertains to Colorado K-12 education laws. While the Colorado General Assembly may choose to adopt state law(s) that address the same topics and/or poses the same requirements as Title IX, state law and its requirements cannot take precedence over federal law. The Colorado General Assembly may adopt more stringent standards regarding the reporting, investigation, or adjudication of sex-based discrimination and harassment in state statute(s) than Title IX regulations, but cannot relax the federal regulatory standards.

INTRODUCTION

Senate Bill 22-207, signed on June 7, 2022, required the Colorado Department of Education to commission a Title IX Regulation Study. In September 2022, the Colorado Department of Education contracted with TNG Consulting (hereinafter “TNG”) to complete a Title IX Regulation Study. The results of this study are divided into two parts: a report answering the questions posed in Senate Bill 22-207 and an analysis of key learning and themes from consultations with stakeholders.⁶

BACKGROUND

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”⁷

The Title IX statute is comprised of only thirty-seven words, the requirements are constantly being shaped and interpreted by court decisions, federal regulations, and other federal guidance. Title IX was passed in 1972. Upon the formation of the U.S. Department of Education’s Office for Civil Rights in 1980, it was tasked with the oversight of Title IX. During the years prior to 2011, most of the focus surrounding Title IX was on athletics and equitable access to education for all genders (guidance, case law, etc.). However, on April 4, 2011, the U.S. Department of Education’s Office for Civil Rights issued a Dear Colleague Letter that changed this focus.⁸ This letter provided significant guidance on the interpretations and procedures related to discrimination on the basis of sex to include sexual harassment, including sexual violence. This letter and its guidance changed the way educators addressed sexual harassment at the time. On May 19, 2020, the U.S. Department of Education codified the current iteration of Title IX regulations focusing on sexual harassment as a form of sexual discrimination.⁹ These regulations, effective August 14, 2020, were significantly different than the directives given in and since the 2011 Dear Colleague Letter. Today, there are new Title IX regulations on the horizon, with an expected release date of May 2023. These new regulations are expected to again change the policies and procedures that will need to be followed for sexual harassment and misconduct moving forward.

The Colorado Department of Education (hereinafter “CDE”) provides leadership, resources, support, and accountability to 178 school districts, 1,927 schools, over 55,000 teachers and over 4,100 administrators in the state of Colorado. CDE provides training and guidance to K-12 schools on Title IX through their website, educational programming (e.g., 2020 Title IX Regulations Webinar Series), and an ongoing

⁶ Colorado SB22-207 – Prevention of Title IX Misconduct in Public Schools <https://leg.colorado.gov/bills/sb22-207>

⁷ 20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972) https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html

⁸ Dear Colleague Letter, April 4, 2011 <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>

⁹ 34 CFR 106 <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

email series providing training and education opportunities.¹⁰ Per Senate Bill 22-207, CDE initiated a Title IX regulation study with TNG, to examine:

- Best practices for prevention, notification, training, and responding to sex-based discrimination and harassment in public schools;
- The gaps between state and federal law regarding Title IX; and
- Whether Title IX regulations place limits on state law and whether the Colorado General Assembly may adopt more stringent standards in state statute.¹¹

This study includes a report answering the questions posed in SB 22-207 and an analysis of key learning and themes from consultations with stakeholders and a description of the methodology being used to conduct this regulation study, and a summary of key learning and themes.

OBJECTIVE

The objective of this regulation study was to provide a response to the three directives set forth in Senate Bill 22-207. TNG met this objective through guided interviews with identified stakeholders (to meet the consultation requirement), document review, and research on best practices in both Colorado and the United States.

METHODOLOGY

The regulation study scope of work is from September 14, 2022 – April 15, 2023. Consultations were conducted in February 2023. The final report is due on March 27, 2023. Inductive analysis was used to categorize data collected from participant responses into four pre-ordinate themes: prevention, notification, training, and response to sex-based discrimination and harassment in public schools.

Design & Data Collection

As the objective of this Title IX regulation study was to study the amendments to the Title IX regulations issued by the United States Department of Education’s Office for Civil Rights and include an examination of best practices and analyze the gaps between state and federal law regarding Title IX,¹² a mixed methods approach was used. The methods included collection and review of associated documents and qualitative interviews with key stakeholders.

Procedures used to collect documentary data involved compilations of documents regarding Title IX requirements, best practices in the field of K-12 Title IX, and the Colorado Department of Higher Education’s Sexual Misconduct Advisory Committee Reports. Three Colorado Department of Higher Education’s Sexual Misconduct Advisory Committee reports¹³ and the Colorado Department of

¹⁰ Information obtained from <https://www.cde.state.co.us/cdecomm/aboutcde>

¹¹ Colorado SB22-207 – Prevention of Title IX Misconduct in Public Schools <https://leg.colorado.gov/bills/sb22-207>

¹² Id.

¹³ <https://cdhe.colorado.gov/students/how-do-i/title-ix-student-protections-against-sexual-misconduct-gender-discrimination>

Education's Title IX website¹⁴ were reviewed for this report; that analysis is included in the [Document Review](#) section below.

Procedures used to collect qualitative data involved the development of a protocol to assist with both conducting stakeholder consultations and ensuring consistency of those consultations. The initial development of the consultation protocol consisted of clarifying the purpose of the consultation, identifying the focus areas, and developing consultation questions/topics linked to each of these focus areas. In the end, the focus areas were identified as:

- (1) the focus of the organization and person,
- (2) the role the person and organization have in the Title IX process,
- (3) what K-12 schools appear to be doing well in relation to prevention, notification, training, and responding to sex-based discrimination and harassment in public schools,
- (4) what K-12 schools can do better in relation to prevention, notification, training, and responding to sex-based discrimination and harassment in public schools, and
- (5) what changes they think need to occur in the current K-12 Title IX process.

The consultation protocol was reviewed and approved by TNG, in consultation with CDE.

TNG identified stakeholders in collaboration with CDE, and CDE approved stakeholders prior to TNG and stakeholder connection per SB 22-207.

Consultations were conducted using the videoconferencing platform Zoom and lasted thirty to forty-five minutes depending on how much information the participating stakeholder chose to share.

All consultations were recorded using Zoom's recording features with permission from the participating stakeholder. The audio recordings of each consultation were transferred into a written transcript. Consultation data is stored securely within TNG's electronic file storage system. Transcripts with personally identifiable information redacted were provided to CDE.

Consulted Stakeholders

TNG selected stakeholders for consultation in collaboration with the CDE and CDE approved participants prior to initiation of the interviews per SB 22-207. A list of potential participants was identified to fit the requirements of the study as noted in SB 22-207. Consultations were requested with these participants and any others identified during the consultation process.

TNG consulted with 14 people who met the SB 22-207 requirements of representatives of CDE, a sexual misconduct advisory committee withing the Department of Higher Education, a K-12 advocacy organization, a Colorado Student Government Organization and practitioners in Colorado K-12 public schools.

¹⁴ https://www.cde.state.co.us/cde_english/titleix

BEST PRACTICES

After review of consultations, documents, and best practices nationally, the following best practices are determined and suggested for Colorado per the questions posed in SB 22-207.

Best practices for prevention of sex-based discrimination and harassment in public K-12 schools

- **A best practice for prevention of sex-based discrimination is to provide age-appropriate education to all students in K-12 schools regarding bodily autonomy and consent as well as acceptable and unacceptable behaviors.**

For example, recognizing that what is appropriate for a 2nd grader differs from that which is appropriate for a high school student, in education on bodily autonomy and consent,¹⁵ as well as acceptable and unacceptable behaviors, should start when a student enters school. The consultations provided a varied view of “age-appropriate” education and school districts start prevention education for students at various ages.¹⁶ One way to meet this best practice standard is for Title IX Coordinators in each district to connect with their social emotional learning or health educators to ensure that students of all ages understand what is and is not acceptable behavior.

Best practices for notification of sex-based discrimination and harassment in public K-12 schools.

- **A best practice is to post notice as to how and who to notify at the school of sex-based discrimination very visibly in schools.**
- **A best practice for notification of sex-based discrimination and harassment in public schools is to have an online form for reporting.**
- **A case management system/database for sex-based discrimination and harassment concerns is a best practice.**

Requirement

Title IX requires that students and parents/guardians/families must be able to easily notify the Title IX Coordinator in case of sex-based discrimination and harassment. Title IX requires schools to provide notice as to how and who to notify at the school of sex-based discrimination and harassment to parents/guardians/families and students.

¹⁵ Colorado has a definition of consent which falls under CRS 22-1-128 as it relates to education. The criminal definition of consent is in CRS 18-3-401.

¹⁶ Sexual education is optional in Colorado. C.R.S. 22-1-128

Best Practice

A best practice is to post notice as to how and who to notify at the school of sex-based discrimination very visibly in schools, as well as meeting the minimum requirement of notification and this information being easily accessible on websites.¹⁷

A best practice for notification of sex-based discrimination and harassment in public schools is to have an online form for reporting, in addition to the required phone, email, and in person options. This can be done through both Google and Microsoft if the school's contract with the service provider includes appropriate protections under the Family Educational Rights and Privacy Act of 1974 (FERPA) and Colorado's Student Data Privacy and Transparency Act. Additionally, there are software platforms that can provide this form as part of a case management system/database.

Having a case management system/database for sex-based discrimination and harassment concerns is a best practice. These systems/databases are made to protect student identities, can allow for anonymous reporting, and have security levels that designate appropriate access to reports and case information. These systems/databases allow for tracking of case documents, follow up, and ensure that student reports are not missed. These systems/databases can be utilized by others within a school district such as counselors, student support, and the Behavior Intervention/ Threat Assessment Teams. Software programs should be vetted to ensure they are using SOC 2 compliant hosting and that the vendor has proper security controls in place to ensure institutional data is protected.¹⁸ Additionally, they should provide a secured back-up system.

Best practices for training regarding sex-based discrimination and harassment in public schools.

- **A best practice for training, regarding sex-based discrimination and harassment is to provide annual training to all K-12 staff in addition to the required role-specific training required for Title IX staff.**

Requirement

In regards to training, Title IX requires that *"Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process receive certain training, including on the definition of sexual harassment, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution process, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias, and (as to investigators and decision-makers) how to determine issues of relevance."*¹⁹

¹⁷ 34 CRF §106.8(a) <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

¹⁸ These types of protections allow for a provider to comply with state law regarding student data privacy i.e. the Student Data Transparency and Security Act (PDF) (HB 16-1423; C.R.S.22-16-101 et seq.)

¹⁹ 34 CRF §106.45(b)(1)(iii) <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

Best Practice

To achieve both the required and best practice trainings, school districts could be organized into training regions/cooperatives. The current Board of Cooperative Education Services (BOCES) in each region could serve in this capacity. This allows for the required role specific training to occur within the regions/cooperatives at a lower cost than funding training separately for each required role in the school districts. Schools within the region/cooperative can host trainings from sources that rely on qualified, experienced professionals and rotate that host site each year to allow for the labor of combined trainings to rotate within the region/cooperative.²⁰ In addition to the required role specific training delineated above, a best practice for training, regarding sex-based discrimination and harassment is to provide annual training to all K-12 staff. Beyond the above required training, all staff members should annually be provided supplemental training on Title IX, its implications and how to support students through the Title IX process.

Best practices for responding to sex-based discrimination and harassment in public K-12 schools.

- **A best practice for responding to sex-based discrimination and harassment in K-12 public schools is to utilize a sexual harassment model policy and procedures for K-12 school districts that meets not only the minimum requirements in current Title IX regulations, but also accounts for best practices in working with K-12 students.**

For example, the 2021 ATIXA Sexual Harassment Model Policy and Procedures (AMMP) for K-12 school districts is a model policy that was created by a team of recognized experts in the field. This policy has been vetted to ensure compliance with all federal mandates while standardizing best practices. The AMMP outlines the best process and procedures for K-12 schools that meet legislative requirements and developmental needs of students. The AMMP is being provided free of charge to Colorado K-12 schools and is included as an appendix of this document.

THE GAPS, CONTRADICTIONS, OVER OR UNDER EXTENSIONS BETWEEN STATE AND FEDERAL LAW REGARDING TITLE IX, AS IT PERTAINS TO COLORADO K-12 EDUCATION LAWS.

- **There are no current gaps, contradictions, over or under extensions between state and federal law regarding Title IX, as it pertains to Colorado K-12 statutes.**

Title IX has very specific training expectations for Title IX teams at K-12 schools as noted above. While the preamble of the Title IX regulations states that “educators, experts, students, and employees should

²⁰ Training from sources that rely on qualified, experienced professionals is an investment. Schools/districts should vet any trainer or training entity’s qualifications and experience prior to engaging with them. Training for all staff can vary, cost for a day of training can range from \$10,000 - \$13,000. For example, the cost for one person to be trained in Title IX Coordinator foundations can range from \$400 and \$1500, depending on the depth of the training and quality of the provider. Hosting a regional or state-wide event can reduce the cost.

also endeavor to prevent sexual harassment from occurring in the first place”²¹ it does not lay out a specific plan for this prevention education. While neither Colorado Revised Statutes 22-1-128 nor 22-25-104 require prevention or sex education (where prevention education is often housed for K-12 students) they have frameworks that assist schools in adhering to best practice as noted above.

Colorado Revised Statutes 22-1-128 details the Comprehensive Human Sexuality Education Act which notes the importance of medically and scientifically accurate information being provided to youth to empower positive and healthy decisions regarding their well-being. While not requiring sex education, it does establish guidelines and requirements for the grant program and the content required for schools that offers comprehensive sexual education programs.²²

Colorado Revised Statutes 22-25-104 created the Colorado Comprehensive Health Education Program, which is a voluntary program in which schools may participate through the creation of local comprehensive health education programs. This program, if opted into by the school/district, requires prior written consent from a parent or guardian at least two weeks prior to instruction on any material discussing or teaching sexuality and human reproduction. The parent or guardian must receive an overview of topics and materials to be presented in the curriculum with a written form allowing them to decline to have their child participate in the program.²³

While both of these statutes can be seen as complementing the Title IX regulation requirements, they accentuate the need for training to meet best practice above regarding training. CRS 22-1-128 provides appropriate language and guidance to meet the best practices for prevention mentioned above if adopted by a school district. There are programs that could be appropriate community partners that could supplement the prevention best practices and could be part of the health education noted in CRS 22-25-103.

Whether Title IX regulations place limits on state law and whether the Colorado General Assembly may adopt more stringent standards in state statute.

- **While the Colorado General Assembly may choose to adopt state law(s) that address the same topics and/or poses the same requirements as Title IX, state law and its requirements cannot take precedence over federal law. The Colorado General Assembly may adopt more stringent standards regarding the reporting, investigation, or adjudication of sex-based discrimination and harassment in state statute(s) than Title IX regulations, but cannot relax the federal regulatory standards.**

The current Title IX regulations provide relatively stringent standards and outline the policies, practices, prevention, and training needed in the Colorado K-12 school system to address sex-based discrimination and harassment.²⁴ The Colorado General Assembly could pass additional legislation regarding policies and procedures to address gender-based discrimination and gender harassment that are more

²¹ 30063 <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

²² Colorado Revised Statutes 2022 Title 22 <https://leg.colorado.gov/sites/default/files/images/olls/crs2020-title-22.pdf>

²³ Colorado Revised Statutes 2022 Title 22 <https://leg.colorado.gov/sites/default/files/images/olls/crs2020-title-22.pdf>

²⁴ This includes an estimate of what the new proposed regulations may include.

prescriptive, however they may consider waiting until the new Federal Title IX regulations are released to do so. It should be noted that if Colorado chooses to pass additional legislation regarding policies and procedures to address gender-based discrimination and gender harassment, the bill could not contradict Title IX or its implementing regulations as Title IX is a federal law and state legislation cannot rewrite or change Title IX regulations.

KEY LEARNINGS AND THEMES FROM COLORADO STAKEHOLDER CONSULTATIONS

General Overview

In general, through the lens of those consulted, these responses were consistent:

- There is a consistent acknowledgement that there are laws and regulations in place to protect students through the K-12 Title IX process.
- There is a good understanding of supportive measures and how they are applied.
- Concerns were consistently about the lack of funding for training and staffing.
- There are also concerns about prevention work being age appropriate for students.

The participants consulted with had a wide range of experience and interaction with K-12 schools and the Title IX process as it relates to sex-based discrimination and harassment. These participants met the SB 22-207 requirements of representatives of CDE, a sexual misconduct advisory committee within the department of Higher Education, a K-12 advocacy organization, a Colorado Student Government organization and practitioners in Colorado K-12 public schools. This range of experience and the varied lenses of the consulted stakeholders led to some variety in the responses, however, some common themes emerged.

Comparative Views (K-12 and Higher Education)

Throughout the consultations, those with knowledge of Title IX as it applies to and is practiced in Higher Education would often compare the two processes (K-12 and Higher Education). One participating stakeholder who is a member of a Colorado Department of Higher Education sexual misconduct advisory committee shared this view stating:

“I would say that similar to the higher ed context is that they [K-12 schools] are understanding the breadth of what they need to do [in regard to Title IX]. I would say that higher ed is doing a lot better, because they are much more aware of how they need to be very mindful of these obligations.”²⁵

The general tenor of this response was that higher education was better as it came to training and prevention, and that knowledge of basic consent and sexual harassment issues was not being taught consistently in the K-12 arena. While consent education is not required by Title IX, failure to include it in the K-12 education process does not meet the best practice for sex-based discrimination and

²⁵ Participating stakeholder A

harassment prevention. The same participating stakeholder stated that they thought that governing bodies should:

*"[Governing bodies should] ...require consent education in high school and make it mandatory. I think that's key. And I think one of the things that the higher ed folks struggle with is there's a lot that we are asked to do when we cannot even have these conversations. They've not had these conversations before, and (neither) have many people. And so this idea that all of a sudden we're going to teach them all these things as they get to higher ed is a huge lift."*²⁶

Consistently when asked how K-12 schools were doing regarding Title IX in general, the response started with – that depends on the district. This is best stated by one participating stakeholder who works directly with K-12 schools:²⁷

"I feel like it depends on the district.

*Historically, it seems like larger districts having more resources, having more personnel may be doing more. Some of their websites look really good. But there are also some small districts that...are doing a lot of great things."*²⁸

A member of a Colorado Department of Higher Education sexual misconduct advisory committee addressed this question stating:

*"I don't think that you can speak generally about all schools, nor do I pretend to know...I think that sexual harassment is a far more systemic issue, and the schools standing alone cannot prevent it. But what they can do a better job of is increasing awareness of what it looks like and creating clear pathways around how to report and address."*²⁹

Members of the K-12 advocacy groups have a more negative view of the K-12 Title IX process than the other consulted groups. One participating stakeholder acknowledged their lens as:

*"I really don't know what's happening that's good. I'll say that. Because I really, truly, I only hear the bad. So that's what gets raised to us and that's what I can provide support on."*³⁰

This same participating stakeholder was very concerned about what they had seen as a consistent failure to act, stating that schools were failing at compliance by:

"Not actually investigating complaints and not actually adjudicating them. So whether that's because they don't know or they don't care or there's other mandates on their time and

²⁶ Id.

²⁷ This group includes CDE and people in various roles related to Title IX in several public school districts, including Title IX Coordinators and General Counsel

²⁸ Participating stakeholder B

²⁹ Participating stakeholder F

³⁰ Id.

resources, and that's just not a priority. I think that's the biggest thing that we're seeing is really just a lack of compliance to federal guidelines.”³¹

The above stakeholder cited that the lack of response was also noted as a deterrent to reporting. When students do not see visible action, they often do not see the value in reporting.

Prevention

While there is recognition amongst those consulted that there are both positives and opportunities when it comes to prevention in the K-12 arena regarding sex-based discrimination and harassment, some schools seem to stand out and exceed expectations, as stated by one K-12 advocacy group participating stakeholder:

“There are some school districts who...really take an active stance to bring in specifically...sexual violence prevention, which includes harassment and assault, but there are some school districts who are really being proactive about that and advocating for it...I think there are also a lot of great anti-bullying programs and campaigns going on in K through 12 schools.”³²

The idea that prevention should be happening for all students at all age groups was a common theme. The lack of consistent sex-education and consent training starting at an early age was cited as a concern by multiple participating stakeholders. One participating stakeholder who is a member of a Colorado Department of Higher Education sexual misconduct advisory committee stated:

“Schools are not mandated to do prevention education or sex ed...we did pass a law that says it needs to be comprehensive and evidence-based and include sections on healthy boundaries and consent. So that's a challenge because we know that sexual violence comes from, one of the ways that it comes is from these views around sex that the media and the society passes on. And that the earlier we kind of override those with messages of healthy boundaries, consent and healthy relationships, the better outcomes we have in terms of reducing sexual misconduct and sexual violence.”³³

Another participating stakeholder who works directly with K-12 schools addressed this concern, but also stated there were concerns about how to do this appropriately, for all age groups and within all communities – both conservative and progressive. They shared:

“The places that get trickier, at least in our smaller towns, is should [we be requiring] the appropriate trainings for students. Age appropriate, and in the right language and messaging. And that's critically important piece because they need to understand what to do. Sometimes we get complaints around two- and three-year-old's, they just need body awareness, and boundaries, and things like that. We don't have capacity; we don't have that kind of expertise. And our community would probably be very concerned about some of these trainings and talking

³¹ Id.

³² Participating stakeholder C

³³ Participating stakeholder D

to some of these young kids about it. So, age appropriate, all the way up the line, age-appropriate trainings for students is probably a need I would identify.”³⁴

Another participating stakeholder who works directly with K-12 schools echoes this concern stating:

“Again, I can't really speak for other districts outside of us, but I feel like we do a good job of prevention, because in our district, those conversations are being had with counselors, with social workers, at the school level, even outside, just outside of even Title IX, I think, because it's just such an important topic for kids. I feel unfortunately, like we're getting to a place where we need to start even younger than the higher grades in elementary.”³⁵

Another participating stakeholder working directly with K-12 reiterated this sentiment stating:

“So we absolutely need to be doing more in this space...we have a team of folks that really looks at best practices and creating materials and curriculum at each level that students should be accessing to build healthy relationship skills. And this is not just sex ed. We're very passionate about this. This is not just sex ed. This is not just going into ninth grade academy or a ninth grade, two weeks during your PE class, someone's talking to you about how to use a condom. We're talking about from the time kids are little, how do we assess consent? How do we refuse behaviors we don't want when we're talking about things like, how do I know if someone wants to play with me, or how do I know if someone wants a hug?”³⁶

A member of a Colorado Department of Higher Education sexual misconduct advisory committee noted a need for more prevention education. Their statement and sentiments include:

“I guess my impression of what I think they could be doing better is doing a better job of educating both their communities. So basically, their student body, for example, is making sure an age appropriate, obviously, because K-12 there's different levels; but I think the priority, it's basically high school down, especially the kind of cases. But I think that the priority is the high schools and the middle schools.”³⁷

Prevention was a concern because it is a delicate balance of what to teach in which age group. Additionally, there is a concern that prevention becomes just one more thing that schools must do. One participating stakeholder that works directly with K-12 stated:

“I don't think we're fully implemented on the prevention piece right now. That's something that I think needs more work. It's on our to-do list, but it hasn't been accomplished yet. We do see a lot of competition for time, for training for our administrators and our teachers. We have a lot of other competing priorities between our main mission of education, education of special populations, education of persons that are English language learners. The reading programs are

³⁴ Participating stakeholder F

³⁵ Participating stakeholder K

³⁶ Participating stakeholder H

³⁷ Id.

getting a lot of emphasis right now, so it's hard to find the time for both administrators and for school staff to do all the training necessary.”³⁸

Another noted that their lack of proximity to community-based organizations was detrimental to their prevention education:

“I'd say I've seen other districts in the prevention area be able to engage with community-based organizations to support their efforts in the prevention area, but those are location specific and the type and amount of support that can consistently be provided to school districts and as a very large one that would be more difficult to engage in.”³⁹

Legislation

Some of those consulted expressed concern that this Title IX Regulation study would create more legislation and hoops to jump through without providing the appropriate funding to do so. One participating stakeholder working directly with K-12 schools stated:

“When I look at the statute that created the study, I'm scratching my head wondering how the state can pass new regulations or new laws on the state level that would improve the situation. Because in my opinion, the main problem with Title IX and K-12 is that it's too complex already. It takes too long. And I don't know of any way the state could reduce the complexity. All I see for them to do is to add new laws and add new complexity. And I don't see how that solves the main problem.”⁴⁰

An advisor for a Colorado Student Government organization expressed concern that legislation is top-down and does not consider the communities where it would be enforced nor the expertise of the teachers in those communities, stating:

“I think if you got a group of teachers together who were high quality teachers and said, “Here are the new expectations. Here's some examples of what's going on right now. How can you help us prevent this from happening in your school?” and say, “We'd love to hear your thoughts. Can you get them back to us?” you would have far, far, far better training going on than what's happening right now with somebody from the outside coming in and trying to do something in a culture that they have no idea about...You have zero idea what the culture is at X High School, nor will you ever. You don't and you won't and so it is unfair to put that on you to expect you to train the teachers at X High School, how to deal with that society and with that culture that lives within that high school...You have to trust the professionals and not demean the professionals and that's not been happening enough. And as a result, I don't think training has gone well. I think there's some resentment about it.”⁴¹

³⁸ Participating stakeholder I

³⁹ Participating stakeholder J

⁴⁰ Participating stakeholder I

⁴¹ Id.

This participating stakeholder also feels that the Title IX regulations are impacting teachers in a negative way and causing them to leave the field. When asked how K-12 schools are doing regarding their response to sex-based discrimination and harassment in the school, their response included:

“I think that my colleagues are doing the very, very best they can. I hear from some ...I still work with some of my colleagues...and I work with some of the best teachers in the country...and they’re looking for ways to get out of something that they love so much to do because of this, because they’re so sick of over of an overabundance of regulations and overabundance of fear. Who knows what’s going to happen next? And if they say something that was innocent but it gets construed as not innocent, look what could happen to them, and so I think right now we’re in such a fear-based place, and that needs to be clarified. I wouldn’t want to be a teacher right now. I’m one of the best teachers there is and I would not want to be a classroom teacher right now. I’m very happy where I am and a large part of that is because of what we’re talking about.”⁴²

A member of a Colorado Department of Higher Education sexual misconduct advisory committee stated their concern for making legislative changes prior to the May 2023 release of new Title IX regulations:

“I do think a bill that might be helpful, but I am hesitating. I think it’s a bit asterisk, is because this is so governed by Title IX, which is federal, which will preempt anything on the state if there’s a conflict, that I don’t think we have land... What’s really hard in this area is we haven’t really landed yet, because the federal side has changed so much, and it continues. We’re sort of the pendulum, sort of one way to say it.”⁴³

Response

There was a varied view of how K-12 schools are doing as it relates to their response to sex-based discrimination and harassment. It ranges from a participating stakeholder working directly with K-12 students’ response of:

“From what I see, they’re doing great. I mean, the structures put in place by Title IX are incredibly burdensome, especially in small communities, so we have conflicts... More often than not, so we’re required to bring in outside investigators and do all those things that we’re doing.”⁴⁴ So I think to the extent, I think that the challenge is around knowing what it looks like, and knowing that when you get a report you have, where it falls, whether it’s bullying, whether it’s harassment, whether it’s Title IX harassment, whether it’s a general code of conduct violation, how to respond in making sure that you’re documenting your responses.”⁴⁵

To the complete opposite response from a K-12 advocacy group member of:

⁴² Id.

⁴³ Participating stakeholder A

⁴⁴ An outside investigator is not required through Title IX. Schools can choose to outsource roles within the Title IX process (Investigator, Decision Maker, etc.) when they do not have enough bandwidth or appropriately trained staff members to fill these roles required by the process.

⁴⁵ Participating stakeholder F

“I will say I’ve experienced a lot more of things that they’re not doing as well, and I think a lot of that just has to do with staff not being that aware of Title IX procedures and processes, and not having training in Title IX because the training can be expensive and time consuming and all of that. So I’ve definitely seen things that are not addressed as quickly as they should be based on Title IX regulations, or just not investigated because it’s like, “Well, he said/she said, so there’s nothing we can investigate,” even though they are supposed to investigate things like that. So I think the investigations are definitely the things that I see not being done as well, but I have seen schools do a good job at offering accommodations and that side of things.”⁴⁶

To the response from a participating stakeholder working directly with K-12 students of:

“I think we’re doing much better with recognizing supportive measures as that bread-and-butter and implementing sooner and implementing in a more robust way, but I would love to see more. I would love to see more of that. I would love to see grownups get more comfortable talking to kids about these concerns and really getting to a place where we’re not having a series of trauma -traumatizing interviews, but where our own comfort level and accepting disclosures and working through the process is evident in the way that we’re talking with our kids.”⁴⁷

A lack of response was also noted as a deterrent to reporting. When students do not see visible action, they often do not see the value in reporting. One participating stakeholder who is a member of a Colorado Department of Higher Education sexual misconduct advisory committee stated:

“[The issue is] ...students see what happens when there’s an issue of harassment or misconduct and how it’s responded to. And when we don’t have a strong response, then we allow it to flourish, and others take note and may follow suit.”⁴⁸

Additionally, while there is a range of opinions on how schools are responding to K-12 cases of sex-based discrimination and harassment, advocacy organizations skewed toward a negative impression or viewpoint in their response. These responses often included a reference to the need for more response based training and education for students and staff. There were concerns raised by the advocacy organizations related to lack of understanding of how students report, who receives that report, and who/what makes someone a required reporter, however stakeholders working directly with K-12 students consulted did not share this concern of a lack of awareness.⁴⁹

Training

Training was consistently an area of concern, often brought up by those consulted throughout the entire consultation. The idea that more training should be happening was a common theme. One member of a Colorado Department of Higher Education sexual misconduct advisory committee summed it up succinctly:

⁴⁶ Participating stakeholder C

⁴⁷ Participating stakeholder H

⁴⁸ Participating stakeholder D

⁴⁹ It should be noted that state child abuse laws require reporting physical and sexual abuse of a child by educators. Title IX guidance indicates education and designation on mandatory reporting.

“If Colorado is able to offer anything, I think training. Free training or funding for training, things like that at the state level, I think would make our schools a lot safer for everybody.”⁵⁰

Through the document review the authors of this report know that there are vast resources provided by the CDE’s Office of Title IX. Based on consultations with stakeholders, these do not seem to be consistently utilized by all of CDE’s constituents. This can be seen in the following statement from a member of a Colorado Department of Higher Education sexual misconduct advisory committee:

“I think there's needs to be a lot of resources and support for K-12 schools on how to implement Title IX in a way that is trauma informed and fair and developmentally appropriate, and understands the complexities of school environments, because it is different to be in a K-12 school with the person who harmed you than on a higher ed campus where there are different situations. So I think there's just a lot more support schools need.”⁵¹

Please note that trauma informed techniques and approaches are not a Title IX requirement but are recognized as best practice (as noted in the 2021 ATIXA Sexual Harassment Model Policy and Procedures (AMMP) for K-12 school districts).

Funding

There was a consistent concern that Title IX compliance and prevention education is generally unfunded. There are needs and expectations for training and prevention that cannot currently be met because there is not sufficient financial support for schools. K-12 schools are asked to do a lot of things, but they do not necessarily have the resources and support to do so.

When asked what needed to be changed in the K-12 Title IX process, consistently the answers were regarding training and funding, and the lack of both. A participating stakeholder working directly with K-12 schools stated:

“I think one of the challenges is probably resources. Just looking at my experience interacting with public schools as a parent, they are funded in very different ways, and they may not be able to give the attention and funding to have someone who's really dedicated to the space. So I think that's a big challenge kind of across education in the K-12 space, are we asking our employees who are also doing Title IX work to wear too many hats?”⁵²

The cost of staffing, prevention programming/education, and training has caused schools and districts to combine roles and responsibilities. Of those school personnel consulted only one had a position that was fully Title IX focused. Thus, the people in these positions must balance their “regular” job as well as the Title IX Coordinator position – which does not allow them to give 100% to either of the roles. The addition of a Title IX Coordinator is not only an investment of salary but also benefits. According to the 2021 ATIXA State of the field survey, 22% of full-time Title IX Coordinators in K-12 schools salary range falls between \$75,001-\$100,000.

⁵⁰ Participating stakeholder C

⁵¹ Participating stakeholder D

⁵² Participating stakeholder E

One participating stakeholder who works with K-12 noted that their district was doing better once they had hired a Title IX Coordinator that focused 70% of their time on Title IX, highlighting the need for more funding and staff stating:

“But since we've had a full-time or nearly full-time Title IX coordinator, I think we've done much better in Title IX because we've had more manpower available to do the training necessary because we as administrators in the administration building, we might know all about Title IX and when we hear about something, we can make sure it's done right and fix it.”⁵³

Training and prevention programming can be costly. While some strategies to reduce this cost are proposed in this report, training is necessary for many roles within the Title IX team and is required annually by the federal regulations. This requirement was identified by many of those consulted as a largely unfunded mandate. CDE provides free training for the state, which was identified as helpful by those consulted, however this training is not for role specific duties. Thus, schools and districts must find the funding for these role specific trainings annually.⁵⁴

Best practices regarding prevention education have become more prescriptive while no additional funding has been provided to schools or districts. The financial burden of prevention programming and education must be mitigated for schools to meet the above best practice. Schools should be partnering with outside agencies to provide this programming in a fiscally responsible manner. School districts should pool their resources and create cooperatives [e.g., Board of Cooperative Education Services (BOCES)] to provide prevention education. In the consultations with the school districts, the breadth of prevention expectations was expressed as a frustration, as the districts feel they need support in this area to meet the needs of their students.

Training for staff is also a concern because it can be cost prohibitive and is a recurring expectation. A struggle was identified in getting all parties properly trained within their Title IX designated roles while also dealing with retaining staff within those roles. One participating stakeholder who works directly with K-12 described it as:

“In terms of training specific to Title IX, that's been difficult for us to roll out. Again, because it's been hard for us to get staff trained, and we felt like we needed to get staff trained before we could get students trained. And because then students ask questions of the staff, and they won't be ready. So that's been a struggle. It's a struggle, and it's unfortunate a struggle, I think, because it has to happen every year. For us that's an additional struggle, because it's a repetitive struggle.”⁵⁵

When asked what needed to be changed in the K-12 Title IX process, the answers were consistent regarding the lack of funding for training. One participating stakeholder who works directly with K-12 responded to the question of what needs to change with the response:

⁵³ Participating stakeholder I

⁵⁴ The Title IX preamble gives guidance that the trainings should be done by "sources that rely on qualified, experienced professionals." It is important to note that the preamble is guidance and not legislation.

⁵⁵ Participating stakeholder K

“Does everybody say money?”⁵⁶

A member of a Colorado Department of Higher Education sexual misconduct advisory committee stated this as:

“So I think especially maybe at the secondary level it is more about funding, because I think they know that they have these issues and they come up a lot, but for elementary could be a mix of both, where they don't necessarily feel like this is going to be a big thing that they're dealing with often, so they're not going to prioritize it.”⁵⁷

To meet the need, repeatedly expressed, for additional funding, the state could provide additional direct funding and/or grants for schools and districts to assist in funding the required staffing and training.

Document Review

Reports written by the Colorado Department of Higher Education’s Sexual Misconduct Advisory Committee

The Colorado Department of Higher Education’s Sexual Misconduct Advisory Committee issues an annual report to the Colorado House and Senate Education Committees as well as to the Colorado institutions of higher education. Their most recent report at the time of this review is dated January 15, 2022.⁵⁸ This group has previously authored two reports and 18 recommendations, the first on August 4, 2020.⁵⁹ The first report focused primarily on institutions of higher education. The second report was published on January 15, 2021.⁶⁰ The second report, while still focusing primarily on higher education, provided two recommendations for K-12 institutions. The third report focused primarily on higher education. In all three reports, there are a total of twenty-one recommendations. Of the twenty-one recommendations, two address K-12:

Recommendation 17:

“Education Committees identify means to include participation of K-12 stakeholders in state advisory role to address and respond to sexual misconduct”

and 18:

“CDHE cover the following issues for the 2021 Summit: IHE responses to new rules (including but not limited to barriers to participation, role of advisors, resource guides and regional center), implicit bias and education/prevention. The Advisory Committee also recommends inviting participation of K-12 stakeholders to the 2021 Summit”

⁵⁶ Participating stakeholder H

⁵⁷ Participating stakeholder C

⁵⁸ 2022 Sexual Misconduct Advisory Committee Report <https://cdhe.colorado.gov/students/how-do-i/title-ix-student-protections-against-sexual-misconduct-gender-discrimination>

⁵⁹ 2020 Sexual Misconduct Advisory Committee Report <https://cdhe.colorado.gov/sites/highered/files/SMAC%20Report%208.4.20%20FINAL.pdf>

⁶⁰ 2021 Sexual Misconduct Advisory Committee Report https://cdhe.colorado.gov/sites/highered/files/SMAC%20Second%20Report%201.15.21%20FINAL_.pdf

These recommendations begin to bring K-12 into the ongoing conversations that have been primarily held by institutions of Higher Education since the Dear Colleague letter in 2011.⁶¹

The Colorado Department of Education's Title IX website

The Colorado Department of Education also provides information and opportunities to K-12 institutions via their Title IX website.⁶² This website provides basic answers to questions regarding Title IX for both schools and their communities. It addresses the laws concerning Title IX, basic obligations and training opportunities as provided by the CDE. Additional pages address the Title IX topics of: Athletic Opportunities and Benefits, Pregnant or Parenting Students, Sex-Based Harassment, Single Sex Classes and Schools, STEM, and Gender/Sexual Orientation. Not all states have websites on their Department of Education page with Title IX resources. The website provided in Colorado is consistent with those that do in providing basic information and resources.

CONCLUSION

The key learning and themes from consultations with Colorado stakeholders were:

- There is a consistent acknowledgement that there are laws and regulations in place to protect students through the K-12 Title IX process.
- There seems to be a good understanding of supportive measures and how they are applied.
- Concerns were consistently shared about the lack of funding for training and staffing.
- There are also concerns about prevention work being age appropriate for students.

The best practices identified in the report are:

- A best practice for prevention of sex-based discrimination is to provide age-appropriate education to all students in K-12 schools.
- A best practice is to post notice as to how and who to notify at the school of sex-based discrimination very visibly in schools.
- A best practice for notification of sex-based discrimination and harassment in public schools is to have an online form for reporting.
- A case management system/database for sex-based discrimination and harassment concerns is a best practice.
- A best practice for training, regarding sex-based discrimination and harassment is to provide annual training to all K-12 staff. Beyond the required training in the Title IX regulations, all staff members should be provided supplemental training annually on Title IX, its implications, and how to support students through the Title IX process.
- There are no current gaps, contradictions, over or under extensions between state and federal law regarding Title IX, as it pertains to Colorado K-12 education laws.

⁶¹ Dear Colleague Letter <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>

⁶² Colorado Department of Education Title IX Website https://www.cde.state.co.us/cde_english/titleix

- While the Colorado General Assembly may choose to adopt state law(s) that address the same topics and/or poses the same requirements as Title IX, state law and its requirements cannot take precedence over federal law. The Colorado General Assembly may adopt more stringent standards regarding the reporting, investigation, or adjudication of sex-based discrimination and harassment in state statute(s) than Title IX regulations, but cannot relax the federal regulatory standards. It should be noted that if Colorado chooses to pass additional legislation regarding policies and procedures to address gender-based discrimination and gender harassment, the bill could not contradict Title IX or its implementing regulations as Title IX is a federal law and state legislation cannot rewrite or change Title IX regulations.

APPENDIX

THE 2021 ATIXA SEXUAL HARASSMENT MODEL POLICY AND PROCEDURES (AMPP) FOR K-12 SCHOOLS AND DISTRICTS

THE 2021 ATIXA SEXUAL HARASSMENT MODEL POLICY AND PROCEDURES (AMPP)
FOR K-12 SCHOOLS AND DISTRICTS

Version 3. Published Fall 2021⁶³

THIS DOCUMENT IS STILL BE REVIEWED AND REVISED FOR COMPLIANCE WITH THE 2020 TITLE IX REGULATIONS AS ADDITIONAL GUIDANCE IS PROVIDED BY THE OPEN CENTER OR THROUGH CASE LAW.

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SPECIAL THANKS TO ATIXA PUBLICATIONS COMMITTEE MEMBERS JONI BAKER, MANDY HAMBLETON, AND ERIC A. KIDWELL FOR EDITING AND PROVIDING FEEDBACK.

SPECIAL THANKS TO THE ATIXA MEMBER REVIEW TEAM OF ANGELA MARIE CATENA, DONALD KAMM, RYAN THOMPSON, AMY ZAVADIL, LAURA RODAS, CHRISTY SIGLER, AND EMILY BABB FOR ADDITIONAL EDITS AND FEEDBACK.

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ATIXA SEXUAL HARASSMENT MODEL POLICY AND PROCEDURES
FOR K-12 SCHOOLS AND DISTRICTS

⁶³ This policy and procedure is not meant for any district to “cut and paste” but is a template reflecting procedures and policies that are consistent with the current federal regulations. They will be updated once the 2023 regulations are released and an updated copy will be provided to the CDE.

This model policy and procedures can be implemented at large or small K-12 school districts and within public, private, charter, or independent K-12 schools. ATIXA recognizes that schools vary in size, structure, governance, capacity, and resources and has drafted this model to comply with the federal 2020 Title IX Regulations.

ATIXA cannot fully anticipate how the U.S. Department of Education’s Office for Civil Rights (OCR) will interpret its final regulations and cautions users that updates to this model may be necessary as OCR provides additional clarifications and technical guidance.

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THE FOLLOWING STATEMENT MUST APPEAR IN ANY PUBLISHED VERSION OF THIS MODEL USED BY A SCHOOL/DISTRICT:

BASED ON THE ATIXA 2021 MODEL SEXUAL HARASSMENT POLICIES AND PROCEDURES FOR K-12 SCHOOLS AND DISTRICTS.

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POLICY: SEXUAL HARASSMENT, INCLUDING SEXUAL ASSAULT, DATING VIOLENCE, DOMESTIC VIOLENCE, STALKING, AND RETALIATION

All text offered in [brackets] throughout this document is optional language. All gray highlighted text must be customized by the end-user or deleted if not needed. Please find and replace the word "Recipient" throughout with the name of your school/district/academy etc. as appropriate.

1. GLOSSARY

- **Advisor** means a person chosen by a party [or provided by the school OR district] to accompany the party to meetings related to the Resolution Process and to advise the party on that process.
- **Appeal Decision-maker** means the person or panel who accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original Determination, and directs corrective action, accordingly.
- **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.
- **Confidential Resource** means an individual external to the school OR district who is not a Mandated Reporter of notice of sexual harassment and/or retaliation under 34 C.F.R. § 106.30.
- **Day** means a [business/school/calendar] day when the Recipient is in normal operation.
- **Decision-maker** means the person or panel who reviews evidence, determines relevance, and makes the Determination of whether this Policy has been violated and/or assigns sanctions.
- **Determination** is a conclusion by the standard of proof that: (1) the conduct did or did not occur as alleged, and (2) that the alleged conduct did or did not violate policy. If the conduct violated policy, the Respondent is "responsible" for a policy violation or "in violation" of policy. If the conduct did not violate policy, the Respondent is "not responsible" for a policy violation or "not in violation" of policy. May also be referred to as "responsibility determination."
- **Directly Related Evidence** is evidence connected to the complaint, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon by the Decision-maker(s). Compare to Relevant Evidence, below.

- **Education program or activity** means locations, events, or circumstances where Recipient exercises substantial control over both the Respondent and the context in which the sexual harassment and/or retaliation occurs.
- **Formal Complaint** means a document submitted or signed by a Complainant or their parent/guardian or signed by the Title IX Coordinator alleging a Respondent engaged in sexual harassment or retaliation for engaging in a protected activity under this Policy and requesting that the school OR district investigate the allegation(s).
- **Formal Grievance Process** means the method of formal resolution designated by the school OR district to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 C.F.R. § 106.45).
- **Grievance Process Pool** includes any Investigators, Decision-makers, [Hearing Decision-makers,] Appeal Decision-makers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same complaint).
- **Informal Resolution** means a complaint resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a formal Determination being reached.
- **Investigator** means the person(s) authorized by the Recipient to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report of Relevant Evidence and file of Directly Related Evidence.
- **Mandated Reporter** means an employee of the Recipient who is obligated by policy to share knowledge, notice, and/or reports of sexual harassment and/or retaliation with the Title IX Coordinator [and/or their supervisor].⁶⁴
- **Notice** means that an employee, student, parent/guardian, or third party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- **Official with Authority (OWA)** means any Recipient employee/[contractor/volunteer].
- **Parties** means the Complainant(s) and Respondent(s), collectively.⁶⁵
- **Recipient** means a K-12 education program that receives federal funding.

⁶⁴ Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

⁶⁵ References to the parties may also include their parent(s)/guardian(s) when applicable or as mandated by Recipient policy, state, and/or federal law.

- **Relevant Evidence** is evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.
- **Remedies** are post- Determination actions directed to the Complainant and/or the community to address safety, prevent recurrence, and restore access to the Recipient’s education program.
- **Respondent** means an individual who has been reported as having engaged in conduct that could constitute sexual harassment or retaliation for engaging in a protected activity under this Policy.
- **Resolution** means the result of an Informal Resolution or Formal Grievance Process.
- **Sanction** means a consequence imposed on a Respondent who is found to have violated this Policy.
- **Sexual Harassment** is an umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence. [See Section 17.](#), for greater detail.
- **Student** means any individual who is registered for or enrolled in a school or any individual who has accepted an offer of admission, and who maintains an ongoing educational relationship with the Recipient.
- **Title IX Coordinator** is at least one official designated by the Recipient to ensure compliance with Title IX and the Recipient’s Title IX program. References to the Title IX Coordinator throughout this policy may also include a designee of the Title IX Coordinator for specific tasks.
- **Title IX Team** refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.

2. RATIONALE FOR POLICY

Recipient is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sexual harassment and retaliation for engaging in a protected activity.

Recipient values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education

program or activity, Recipient has developed policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation sexual harassment or retaliation.

3. APPLICABLE SCOPE

The core purpose of this policy is the prohibition of sexual harassment and retaliation. When an alleged violation of this Policy is reported, the allegations are subject to resolution using the process detailed below.

When the Respondent is a member of the Recipient community, a Formal Complaint may be filed and a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Recipient community. This community includes, but is not limited to, students, student organizations, teachers/faculty, administrators, staff, and third parties such as [parents/guardians, guests, visitors, volunteers, vendors, contractors, invitees, and campers]. The procedures below may be applied to incidents, to patterns, and/or to the school culture/climate, all of which may be addressed and investigated in accordance with this Policy.

Recipient recognizes that reports and/or Formal Complaints under this Policy may include violations of other Recipient policies; may involve various combinations of students, employees, and other members of the Recipient community; and may require the simultaneous attention of multiple Recipient departments. Accordingly, all Recipient departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable Recipient policies, to provide uniform, consistent, efficient, and effective responses to alleged sexual harassment or retaliation.

4. TITLE IX COORDINATOR

The [Title OR Name] serves as the Title IX Coordinator and oversees implementation of this policy. The Title IX Coordinator has the primary responsibility for coordinating Recipient's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remedy, and prevent sexual harassment and retaliation prohibited under this Policy.

5. INDEPENDENCE AND CONFLICT-OF-INTEREST

The Title IX Coordinator [manages the Title IX Team and] acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and these procedures.

The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific complaint or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, sexual harassment, or retaliation by the Title IX Coordinator, contact the Superintendent or other appropriate official [insert contact

information here]. Concerns of bias, conflict of interest, sexual harassment, or retaliation by any other Title IX Team member should be raised with the Title IX Coordinator.

6. ADMINISTRATIVE CONTACT INFORMATION

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this Policy and procedures, may be made internally to:

Name:
Title IX Coordinator
Office of xxxxxxxxxxxxxx
Location/Address:
(###) ###-###
Email:
Web:

Include all relevant Title IX Team members here as well, and, if applicable, the general delineated responsibilities of each.

[In addition to the Title IX Team members listed above, the officials listed below may also accept notice or complaints on behalf of the Recipient. List all such officials here:]

Recipient has also classified all employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing sexual harassment and/or retaliation.

The section below on Mandated Reporting details the responsibilities and duties that all Recipient employees have as Mandated Reporters under Title IX.

Inquiries may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

May note [local OCR office contact](#) information here

Add contact information for any other applicable federal or state agency (e.g., DOJ)⁶⁶

For complaints involving employee-on-employee conduct: [Equal Employment Opportunity Commission](#) (EEOC)⁶⁷

7. NOTICE/COMPLAINTS OF SEXUAL HARASSMENT AND/OR RETALIATION

Notice or complaints of sexual harassment and/or retaliation may be made using any of the following options:

- 1) File a report or Formal Complaint with, or give verbal notice to, the Title IX Coordinator [or deputy/deputies/Officials with Authority] (repeat contact information from above). A report or Formal Complaint may be made at any time (including during non-school hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.
- 2) [Report online, using the reporting form posted at [insert URL]. Anonymous reports are accepted but can lead to a need to investigate to determine if the parties can be identified. If not, no further formal action is taken, though measures intended to protect the community may be enacted. The Recipient tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report that does not identify the Complainant. Because reporting carries no obligation to initiate a formal response, and because the Recipient respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, criminal activity, child abuse, and/or the Respondent is an employee.]⁶⁸
- 3) Report using the sexual harassment hotline ###-###-####.
- 4) Add any other school reporting options here (supervisors, etc.).

The Recipient's formal complaint form can be accessed at xxx.]

As used in this Policy, the term "Formal Complaint" means a document or electronic submission (such as by electronic mail or through an online portal provided by the Recipient for this

⁶⁶ Consult grant terms and program participation agreements for specific disclosures required.

⁶⁷ EEOC has jurisdiction over Title IX employment claims. We recommend providing local EEOC office contact information in this section. Please consult: <http://www.eeoc.gov/field/index.cfm> to locate your local office's contact information.

⁶⁸ Modify this section if you offer an online complaint option, as opposed to merely filing an online report. Not all institutions consider online reports to be formal complaints.

purpose) that contains the Complainant's, or their parent/guardian's, physical or digital signature, or otherwise indicates that the Complainant, or their parent/guardian, is the person filing the complaint, and requests that the Recipient investigate the allegations.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant, and/or their parent/guardian, to ensure that it is filed correctly.

8. SUPPORTIVE MEASURES

Recipient will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available. They are offered, without fee or charge to the parties, to restore or preserve access to the Recipient's education program or activity, including measures designed to protect the safety of all parties and/or the Recipient's educational environment, and/or to deter sexual harassment and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the Recipient will inform the Complainant, in writing, that they may file a Formal Complaint with the Recipient either at that time or in the future, if they have not done so already.

The Title IX Coordinator works with the Complainant [, and/or their parent/guardian,] to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

The Recipient will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the Recipient's ability to provide those supportive measures. Recipient will minimize any academic/occupational impact on the parties as much as possible. The Recipient will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- [Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the school community or community subgroup(s)
- Altering school housing assignment(s)

- Altering work arrangements for employees
- Safety planning
- Providing school safety escorts
- Providing transportation assistance
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass orders
- Emergency warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the school
- Any other actions deemed appropriate by the Title IX Coordinator]

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as additional misconduct allegations to an ongoing complaint under this Policy.

9. EMERGENCY REMOVAL

The Recipient can act to remove a student Respondent from its education program or activities—partially or entirely—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 Coordinator [in conjunction with the Behavioral Intervention Team (also known as BIT/BAT/TAT/CARE, etc.) using its standard objective violence risk assessment procedures]. 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.

When an emergency removal is imposed, the student and parent/guardian will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon as reasonably possible thereafter, 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. When this meeting is not requested [in a timely manner], objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it equitable to do so.

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 (10) days of the decision to implement the emergency removal. If it is determined that an emergency removal is necessary for more than ten (10) school days, that would constitute a change in placement and would be addressed in accordance with the requirements of 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. [There is no appeal process for emergency removal decisions].⁶⁹

The Title IX Coordinator has sole discretion under this Policy to implement or modify an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline within the student or employee conduct processes, which may include expulsion or termination.

The Recipient will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: [removing a student from housing facilities, [temporarily re-assigning an employee,] restricting a student's [or employee's] access to or use of facilities or equipment, changing transportation arrangements, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student organizational leadership, or interscholastic/intramural/club athletics].

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

When the Respondent is an employee, existing provisions (link) for interim action under Recipient's employee policies and procedures are applicable instead of the above emergency removal process.

⁶⁹ The results of the manifestation determination can be appealed in accordance with the requirements under the IDEA.

10. PROMPTNESS

Once a Recipient has received notice or a Formal Complaint, all allegations are promptly acted upon. Complaints typically take 30-60 [business/school/calendar] days to resolve. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the Recipient will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in Recipient procedures will be delayed, Recipient will provide written notice to the parties of the delay, the cause for the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

11. CONFIDENTIALITY/PRIVACY

Every effort is made by the Recipient to preserve the privacy of reports.⁷⁰ Recipient will not share the identity of any individual who has made a report or Formal Complaint of sexual harassment or retaliation; any Complainant; any individual who has been reported to be the perpetrator of sexual harassment or retaliation; any Respondent; or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA)⁷¹ or its implementing regulations,⁷² or as required by law; or to carry out the purposes of 34 C.F.R. Part 106,

⁷⁰ For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will only be shared with the parties, their Advisors, and a limited number of Recipient employees who “need to know” in order to assist in the assessment, investigation, and resolution of a report or Formal Complaint. All employees who are involved in the Recipient’s response to notice under this policy 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 Recipient’s Student Records Policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws (including Title IX) that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The Recipient has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see page 26 of this policy. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Other information may be shared as required by law.

⁷¹ 20 U.S.C. 1232g

⁷² 34 C.F.R. §99

including any investigation, hearing, or grievance proceeding arising under these policies and procedures.

The Recipient reserves the right to determine which Recipient officials have a legitimate educational interest in being informed about incidents that fall within this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: [Office for Diversity/Equity/Inclusion, Student Services, Integrity and Compliance Office, Recipient Police/School Security, and the Behavioral Intervention/Threat Assessment Team]. Information will be shared as necessary with Investigators, Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

The Recipient may contact parents/guardians of students to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically [below](#).

12. JURISDICTION

This Policy applies to the Recipient's education program and activities, to conduct that takes place on property owned or controlled by the Recipient, and at Recipient-sponsored events. The Respondent must be a member of Recipient's community in order for this Policy to apply.

This Policy can also be applicable to the effects of out-of-school misconduct that effectively deprives a person of access to Recipient's education program or activities. The Recipient may also extend jurisdiction to out-of-school and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial Recipient interest.

Regardless of where the conduct occurred, the Recipient will address notice/complaints to determine whether the conduct occurred in the context of its employment or education program or activity and/or has continuing effects in school (including virtual learning and employment environments) or in an out-of-school sponsored program or activity. A substantial Recipient interest includes:

- 1) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law
- 2) Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual

- 3) Any situation that significantly impinges upon the rights, property, or achievements of oneself or others, or significantly breaches the peace, and/or causes social disorder
- 4) Any situation that substantially interferes with the educational interests or mission of the Recipient

If the Respondent is unknown or is not a member of the Recipient community, the Title IX Coordinator will assist the Complainant in identifying appropriate school OR district and local resources and support options. If criminal conduct is alleged, the Recipient can assist in contacting local law enforcement [or school resource officers] if the individual would like to file a police report.

Further, even when the Respondent is not a member of the Recipient's community, supportive measures, remedies, and resources may be provided to the Complainant by contacting the Title IX Coordinator or [add advocate contact here, if available].

In addition, the Recipient may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Recipient property and/or events.

All vendors serving the Recipient through third-party contracts are subject to the policies and procedures of their employers [and/or to these Policies and procedures to which their employer has agreed to be bound by their contracts].

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

[Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences sexual harassment or retaliation in an externship, study abroad program, or other environment external to the Recipient where sexual harassment policies and procedures of the facilitating or host organization may give the Complainant recourse.]

13. TIME LIMITS ON REPORTING

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

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who

may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

[When notice/complaint is affected by significant time delay, the Recipient will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.⁷³ Typically, this Policy is only applied to alleged incidents that occurred after August 14, 2020. For alleged incidents that occurred prior to August 14, 2020, previous versions of this Policy will apply. Those versions are available from the Title IX Coordinator.]

14. ONLINE SEXUAL HARASSMENT AND/OR RETALIATION

Recipient policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the Recipient's education program and activities or when they involve the use of Recipient networks, technology, or equipment.

Although Recipient may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to Recipient, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites; sharing inappropriate content via social media; unwelcome sexual or sex-based messaging; distributing, or threatening to distribute, nude or semi-nude photos or recordings; breaches of privacy; or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Recipient community.

[Public Recipients: Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the Recipient's control (e.g., not on Recipient networks, websites, or between Recipient email accounts) will only be subject to this Policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but legally protected speech cannot be subjected to discipline.

Out-of-school/work harassing speech by employees, whether online or in person, may be regulated by the Recipient only when such speech is made in an employee's official or work-related capacity.]

⁷³ There is an argument to be made to apply current policy definitions to past misconduct, but such an approach would have to be consented to by the parties and/or carefully vetted with legal counsel.

15. POLICY ON NONDISCRIMINATION

[Insert Recipient non-discrimination disclosure here and apply it specifically to ensure this Policy is not enforced in discriminatory ways.]

16. SEXUAL HARASSMENT

Students, staff, administrators, and teachers are entitled to an employment and educational environment that is free of sexual harassment. The Department of Education’s Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State/Commonwealth/District of [insert state] regard sexual harassment as an unlawful discriminatory practice.

This Policy is not meant to limit or prohibit approved educational content or discussions inside or outside of the classroom that include germane, but controversial, or sensitive subject matters that may be protected by academic freedom [and/or the First Amendment⁷⁴]. When speech or conduct is protected by academic freedom [and/or the First Amendment], it will not be considered a violation of Recipient Policy, though supportive measures will be offered to those impacted.

The section below describes the specific forms of legally prohibited harassment that are also prohibited under Recipient Policy. All offense definitions encompass actual and/or attempted offenses.

Recipient has adopted the following definition of sexual harassment in order to address the unique environment of an educational setting.

Acts of 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.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex,⁷⁵ or that is sexual in nature that satisfies one or more of the following:

- 1) **Quid Pro Quo:**
 - a. an employee of the school OR district,
 - b. conditions⁷⁶ the provision of an aid, benefit, or service of the school OR

⁷⁴ Private institutions may or may not afford First Amendment protections for students and employees.

⁷⁵ Including gender identity, gender expression, sexual orientation, and sex stereotypes.

⁷⁶ Implicitly or explicitly.

district,

- c. on an individual's participation in unwelcome sexual conduct.

2) **Sexual Harassment:**

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a Complainant equal access to the school's OR district's education program or activity.⁷⁷

⁷⁷ Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. This definition is broad enough to potentially encompass forms of sex-based disparate treatment, even if not harassing in nature.

- 3) **Sexual Assault**, defined as:
- a. Any sexual act⁷⁸ directed against a Complainant,⁷⁹
 - o without their consent, or
 - o instances in which the Complainant is incapable of giving consent.⁸⁰
 - b. **Incest:**
 - o Non-forcible sexual intercourse,
 - o between persons who are related to each other,
 - o within the degrees wherein marriage is prohibited by [insert state] law.
 - c. **Statutory Rape:**
 - o Non-forcible sexual intercourse,

⁷⁸ A 'sexual act' is specifically defined by federal regulations to include one or more of the following:

Rape:

- [The carnal knowledge of a Complainant OR Penetration], no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person,
- without their consent,
- including instances where they are incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity."

Sodomy:

- Oral or anal sexual intercourse with a Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of the Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Fondling:

- The touching of the private body parts of the Complainant (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

⁷⁹ This would include having another person touch you sexually, forcibly, and/or without their consent.

⁸⁰ This definition set is not taken from NIBRS verbatim. ATIXA has substituted Complainant for "victim," has removed references to his/her throughout, has defined "private body parts," has removed the confusing and unnecessary term "unlawfully," and has inserted language clarifying that the Recipient interprets "against the person's will" to mean "non-consensually." These are liberties ATIXA thinks are important to take with respect to the federal definitions, but users should consult legal counsel before adopting them.

o with a person who is under the statutory age of consent of [insert age in your state].

4) **Dating Violence**, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 1. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 2. Dating violence does not include acts covered under the definition of domestic violence.

5) **Domestic Violence**,⁸¹ defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of [insert your state here], or
- g. by any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of [insert your state here].

6) **Stalking**, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at the Complainant, that
 - i. would cause a reasonable person to fear for the person’s safety, or
 - ii. the safety of others; or

⁸¹ To categorize an incident as Domestic Violence under this Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- iii. Suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Recipient may impose any level of sanction, ranging from a warning up to and including suspension or expulsion/termination, for any offense under this Policy. The most serious offenses may result in suspension/expulsion/termination.

A. Force, Coercion, Consent, and Incapacitation

As used in the offenses above, the following definitions and understandings apply:

Force: 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 (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me, I’ll do what you want.”).

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: 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, and
- voluntary, and
- clear permission

- by word or action
- to engage in sexual activity.

Individuals may perceive and 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. Reasonable reciprocation can be implied consent. 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, that sexual activity should stop within a reasonably immediate time.

Consent to some sexual contact (such as kissing or fondling) may not mean there is consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not enough to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected.

Proof of consent or non-consent is not a burden placed on either party involved in a complaint. Instead, the burden remains on the **Recipient** to determine whether its 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 misconduct occurred and any similar and previous patterns that may be evidenced.

Incapacitation: A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including due to alcohol or other drug use. As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault 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, and 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.

This Policy 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 substances.

17. RETALIATION

Protected activity under this Policy includes reporting alleged misconduct that may implicate this Policy, participating in the Resolution Process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the **Title IX Coordinator** and will be promptly investigated. **Recipient** will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Recipient and any member of **Recipient’s** 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 complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and procedure.

Filing a complaint under another school OR district policy⁸² could be considered retaliatory if those allegations could be subject to this Policy, when the allegations are made for the purpose of interfering with or circumventing any right or privilege afforded within this Policy that is not provided under the other **school OR district** policy that was used. Therefore, **Recipient** carefully vets all complaints to ensure this does not happen, and to ensure that complaints are referred to the appropriate process.

⁸² Any other school/district procedures for resolving allegations of misconduct that are not compliant with 34 C.F.R. § 106.45.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Pursuing a **code of conduct** violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy and procedure does not constitute retaliation, provided that a Determination that the conduct did not violate this Policy, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

18. 21. UNETHICAL RELATIONSHIPS/CONSENSUAL RELATIONSHIPS

[Insert school/district Unethical Relationships/Consensual Relationships policy here, if applicable. See [Appendix D](#) for a sample model policy]

19. MANDATED REPORTING

All **Recipient** employees (teachers, staff, administrators) are expected to report actual or suspected sexual harassment or retaliation to appropriate officials immediately.

To make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting school resources.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or policy violations, and these employees will immediately pass reports to the **Title IX Coordinator** (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

The following sections describe the reporting options at **Recipient** for a Complainant or third party (including parents/guardians when appropriate):

A. Confidential Resources

Because all Recipient employees are required to report actual or suspected sexual harassment or retaliation, any such information a Complainant shares with any Recipient employee cannot remain confidential.

If a Complainant would like the details of an incident to be kept confidential, the Complainant must speak with someone outside of the school OR district. Following are some confidential community-based resources:

- Employee Assistance Program
- Licensed professional counselors and other medical providers

- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

All of the above-listed individuals are not Recipient employees and will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/[elder/individual with a disability], or when required to disclose by law or court order.

B. Mandated Reporters and Formal Notice/Complaints

All Recipient employees are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a sexual harassment or retaliation report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this Policy that they observe or have knowledge of, even if not reported to them by a Complainant or third party.

Complainants may want to carefully consider whether they share personally identifiable details with Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Failure of a Mandated Reporter to report an incident of sexual harassment or retaliation of which they become aware is a violation of Recipient Policy and may result in disciplinary action for failure to comply/failure to report.

Though this may seem obvious, when a Mandated Reporter is engaged in sexual harassment and/or retaliation in violation of this Policy, they still have a duty to report their own misconduct, though the Recipient is technically not on notice simply because a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of sexual harassment or retaliation under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

C. Anonymous Notice to Mandated Reporters

[At the request of a Complainant, notice may be given by a Mandated Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandated Reporter cannot remain anonymous themselves.]

If a Complainant has requested that a Mandated Reporter maintain the Complainant's anonymity, the Mandated Reporter may do so unless the incident involves adult-on-student conduct or it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.

Anonymous notice will be investigated by the Recipient to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits the Recipient's ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator. [Mandated reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled, depending on state reporting of abuse requirements.]

20. WHEN A COMPLAINANT DOES NOT WISH TO PROCEED

If a Complainant, or their parent/guardian, does not wish for the Complainant's name to be shared, does not wish for an investigation to take place, and/or does not want a Formal Complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the school and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the Recipient proceeds when the Complainant, or their parent/guardian, does not wish to do so, and the Title IX Coordinator may sign a Formal Complaint to initiate a grievance process [usually upon completion of an appropriate violence risk assessment].

[The Title IX Coordinator's decision should be based on results of the violence risk assessment that shows a compelling risk to health and/or safety that requires the Recipient to pursue formal action to protect the 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. Recipients may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the Recipient's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

When the Recipient 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 Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor or the student'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.).

Note that the Recipient's ability to remedy and respond to notice may be limited if the Complainant does not want the Recipient 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 Recipient's obligation to protect its community.

In cases in which the Complainant, or their parent/guardian, requests no formal action and the circumstances allow the Recipient to honor that request, the Recipient may offer Informal Resolution options⁸³, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant, or their parent/guardian, 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 Recipient, and to have the incident(s) investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

⁸³ The 2020 Title IX Regulations prohibit informal resolution of a student complaint against an employee.

21. EMERGENCY NOTIFICATIONS

Recipient may issue emergency notifications for incidents that pose a serious or continuing threat of bodily harm or danger to members of the school community.

The Recipient will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

These notifications may be issued school OR district-wide or may be limited to those members of the community who are potentially impacted. The Title IX Coordinator will work in conjunction with the appropriate school OR district officials in determining the scope and content of the notification that may be issued.

22. FALSE ALLEGATIONS AND EVIDENCE

Deliberately false and/or malicious accusations under this Policy 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, rendering a Determination, or facilitating an Informal Resolution can be subject to discipline under appropriate Recipient policies.

23. AMNESTY

The Recipient community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to Recipient officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the Recipient community that Complainants choose to report misconduct to Recipient officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, Recipient maintains a policy of offering parties and witnesses amnesty from minor policy violations related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. [The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty—the incentive to report serious misconduct—is rarely applicable to Respondent with respect to a Complainant.]

In determining whether to offer amnesty, the Title IX Coordinator will consider factors such as: the nature and severity of the policy violation; the age of the individual; the impact on the health and safety of the individual and the school community; and the best interests of the school community.

A. Students

Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to seek assistance).

The Recipient maintains a policy of amnesty for students who offer help to others in need. [Although policy violations cannot be overlooked, the Recipient may provide purely educational options with no official disciplinary Determination, rather than punitive sanctions, to those who offer their assistance to others in need.]

B. Employees⁸⁴

[Sometimes, employees are hesitant to report sexual harassment or retaliation they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the [unethical relationship policy] and is then assaulted in the course of that relationship might hesitate to report the incident to Recipient officials.]

The Recipient may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.]

⁸⁴ This section is optional as most traditional policies only offer amnesty to students. If a Recipient decides not to include this section, the “student” section can simply be merged into the amnesty section.

24. PRESERVATION OF EVIDENCE

The preservation of evidence in incidents of sexual assault and stalking is critical to potential criminal prosecution and to obtaining restraining/protective orders and is particularly time sensitive. The Recipient will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

Sexual Assault

- Seek forensic medical assistance at the [specify] hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container [available from...].
- Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

Stalking

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
 - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
 - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of e-mail or social media correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence including notes, gifts, etc. in place when possible.
- Save copies of any messages, to include those showing any request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be discussed, if timely.

RESOLUTION PROCESS⁸⁵ FOR ALLEGED VIOLATIONS OF THE SEXUAL HARASSMENT POLICY

1. OVERVIEW

Recipient will act on any formal or informal notice/complaint of violation of the Sexual Harassment Policy (“the Policy”) that is received by the Title IX Coordinator⁸⁶ or any other employee by applying these procedures.

[The procedures below apply to all allegations of sexual harassment or retaliation involving students, staff, administrators, or teachers. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations may proceed using these same grievance procedures, clarifying which Policy provisions above are applicable. Although the effect of the Title IX regulations can be confusing, these grievance procedures apply to all Policy offenses listed above.

OR

The procedures below apply only to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined in the Policy) involving students, staff, administrator, or teachers.

If a dismissal occurs under these procedures or the allegations fall outside of the jurisdiction of these procedures, as determined by the Title IX Coordinator, the applicable procedures under the Student Handbook or the applicable employee handbook will be used to resolve the complaint.

Unionized/other categorized employees are subject to the terms of their agreements/employees’ rights to the extent those agreements do not conflict with federal or state compliance obligations.^{87]}

The procedures below may be used to address alleged collateral misconduct by the Respondent

⁸⁵ For Recipients with Formal Grievance Processes enabling students and/or employees to challenge Recipient action, it is recommended that allegations under this policy be exempted from that process and replaced with the resolution process outlined here. Most existing grievance proceedings are neither equitable (by definition), nor are they sufficiently prompt to satisfy Title IX.

⁸⁶ Anywhere this procedure indicates “Title IX Coordinator,” the Recipient may substitute a trained designee.

⁸⁷ Consult with qualified legal counsel on the complex interaction between the regulations and union rights under collective bargaining agreements.

arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). In such cases, the Title IX Coordinator may consult with the school OR district officials typically overseeing such conduct (e.g., human resources, student conduct, etc.) to provide input as needed. All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the student and employee handbooks.

2. NOTICE/FORMAL COMPLAINT

Upon receipt of a Formal Complaint or notice of an alleged policy violation by the Title IX Coordinator,⁸⁸ the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the Recipient needs to take. The Title IX Coordinator will contact the Complainant to offer supportive measures and determine whether the Complainant wishes to file a Formal Complaint.

The Title IX Coordinator will then initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to file a Formal Complaint
- 2) An Informal Resolution (upon submission of a Formal Complaint)
- 3) A Formal Grievance Process including an investigation and a determination of whether policy was violated (upon submission of a Formal Complaint)

The Recipient uses a Formal Grievance Process as described below to determine whether the Policy has been violated. If so, the Recipient will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment or retaliation, their potential recurrence, and/or their effects.

3. INITIAL ASSESSMENT

Following receipt of notice or a Formal Complaint of an alleged violation of this Policy, the Title IX Coordinator engages in an initial assessment typically within one to three (1-3) [business/school/calendar] days. The steps in an initial assessment can include:

- The Title IX Coordinator seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired.
 - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint themselves [because a violence risk assessment indicates a compelling threat to health and/or safety].
- If a Formal Complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.

⁸⁸ If circumstances require, the Superintendent or Title IX Coordinator will designate another person to oversee the resolution process should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an Informal Resolution option, or a formal investigation and grievance process.
 - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their needs, determines the appropriate supports, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
 - If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution⁸⁹ [which informal mechanism may serve the situation best or is available,] and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
 - If a Formal Grievance Process is preferred by the Complainant, the Title IX Coordinator determines if the alleged misconduct falls within the scope of the 2020 Title IX regulations:
 - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address, based on the nature of the complaint:
 - an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate concern

If the alleged misconduct does not fall within the scope of the 2020 Title IX regulations, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply [which Resolution Process is applicable,] and will refer the matter accordingly. Please note that dismissing a complaint under the 2020 Title IX regulations is solely a procedural requirement under Title IX that does not limit the Recipient’s authority to address a complaint with an appropriate process and remedies.

A. Violence Risk Assessment

In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the [insert name of team] as part of the initial assessment. A VRA can aid in critical and/or required determinations, including:

- 1) Emergency removal of a student Respondent on the basis of immediate threat to an individual or the school community’s physical health/safety
- 2) Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complainant

⁸⁹ Per the 2020 Title IX regulations, the recipients are prohibited from Informal Resolution of a complaint by a student against an employee.

- 3) Whether the scope of the investigation should include an incident, and/or assess a pattern of misconduct, and/or a climate of hostility/harassment
- 4) To help identify potential predatory conduct
- 5) To help assess/identify grooming behaviors
- 6) Whether it is reasonable to try to resolve a complaint through Informal Resolution, and if so, what approach may be most successful
- 7) Whether to communicate with a transfer school/district about a Respondent
- 8) Assessment of appropriate sanctions/remedies (to be applied post-Determination)
- 9) Whether an Emergency Warning/Trespass order is needed

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct/discipline officers, or other Behavioral Intervention Team (BIT)/CARE team members.

A VRA authorized by the Title IX Coordinator should occur in collaboration with the BIT/CARE or threat assessment team. In cases where the Respondent is a student with a disability who is receiving services under an Individualized Educational Plan (IEP), a VRA should also occur in collaboration with the student's IEP Team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

More about the Recipient's process for VRA can be found below in [Appendix E.](#)

B. Dismissal (Mandatory and Discretionary)⁹⁰

The Recipient must dismiss a Formal Complaint or any allegations therein if, at any

⁹⁰ These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 C.F.R. § 106.45.

time during the investigation or decision-making process, it is determined that:

- 1) The conduct alleged in the Formal Complaint would not constitute sexual harassment as defined above, even if proved
- 2) The conduct did not occur in an education program or activity controlled by the Recipient and/or the Recipient does not have control of the Respondent
- 3) The conduct did not occur against a person in the United States
- 4) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the Recipient's education program or activity of the⁹¹

The Recipient 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 Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations within the complaint
- 2) The Respondent is no longer enrolled in or employed by the Recipient
- 3) Specific circumstances prevent the recipient from gathering evidence sufficient to reach a Determination as to the Formal Complaint or allegations therein

A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

Upon any dismissal, the Recipient 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 procedures for appeal. [The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.]

4. COUNTERCLAIMS

The Recipient is obligated to ensure that the grievance process is not abused for retaliatory purposes, thus counterclaims made with retaliatory intent will not be permitted. The Recipient 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.

⁹¹ Such a Complainant is still entitled to supportive measures, but the Formal Grievance Process is not applicable.

Counterclaims determined to have been reported in good faith will be processed using the Resolution Process below. Investigation of such claims may take place after resolution of the underlying initial complaint, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying complaint, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

5. RIGHT TO AN ADVISOR

The parties may each have an Advisor⁹² of their choice present with them for all meetings, interviews, and hearings within the Resolution Process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.⁹³ 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.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Decision-maker(s).

The Recipient cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor or selects an advisor who is an attorney, but the other party does not have an advisor or their selected advisor is not an attorney, the Recipient is not obligated to provide an advisor or an attorney for a party.

[As a public entity, Recipient fully respects and accords the Weingarten rights of employees. For parties who are entitled to union representation, the Recipient will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors. Witnesses [are OR are not] permitted to have union representation or Advisors in grievance process interviews or meetings.]

⁹² This could include an attorney, advocate, or support person. The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally), but some Recipients do permit more than one. If the Recipient allows more than one Advisor for one party, they should do so for all parties.

⁹³ “Available” means the party cannot insist on an Advisor who simply doesn’t have inclination, time, or availability. Also, the Advisor cannot have institutionally 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.

[OPTIONAL INCLUSION: The Recipient may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.]

A. 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 Recipient community.

[The Title IX Coordinator will also offer to assign a trained Advisor to any party if the party so chooses. If the parties choose an Advisor from the pool available from the Recipient, the Advisor will be trained by the Recipient and be familiar with the Recipient's Resolution Process.]

If the parties choose an Advisor from outside the pool of those identified by the Recipient, the Advisor may not have been trained by the Recipient and may not be familiar with Recipient policies and procedures.]

Parties also have the right to choose not to have an Advisor during the Resolution Process.

B. Advisor's Role in Meetings and Interviews

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

[Where applicable under state law or Recipient policy, Advisors or attorneys are permitted to fully represent their advisees or clients in resolution proceedings, including all meetings, interviews, and hearings. Although Recipient prefers to hear from parties directly, in these cases, parties are entitled to have evidence provided by their chosen representatives.⁹⁴]

⁹⁴ Recipients should be mindful that this may be applicable for suspension/expulsion hearings that may result from Title IX complaints resolved under these procedures.

C. Pre-Interview Meetings

Advisors and their advisees may request to meet with the Investigator(s) conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and Recipient's policies and procedures.

D. Advisor Violations of Recipient Policy

All Advisors are subject to the same Recipient policies and procedures, whether they are attorneys or not [, and whether they are selected by a party or assigned by the Recipient]. Advisors are expected to advise their advisees without disrupting proceedings. [Advisors should not address Recipient officials or Investigators in a meeting or interview unless invited to do so (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee⁹⁵ during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s)].

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 (e.g., due to age or disability), the Advisor will 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 Policy, or who refuses to comply with the Recipient's established rules of decorum, will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including the Recipient requiring the party to use a different Advisor [or providing a different Recipient-appointed Advisor]. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

E. Sharing Information with the Advisor

The Recipient expects that the parties may wish to have the Recipient share documentation and evidence related to the allegations with their Advisors. The Recipient

⁹⁵ Subject to the state law provisions or Recipient policy above.

provides a consent form that authorizes the Recipient to share such information directly with a party's Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before Recipient is able to share records with an Advisor.

[If a party requests that all communication be made through their attorney Advisor, the Recipient [will OR will not] comply with that request OR will comply with that request at the discretion of the Title IX Coordinator.]

[Advisors appointed by the school OR district will not be asked to disclose details of their interactions with their advisees to school OR district officials or Decision-makers.]

F. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. [These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Recipient. Advisors will be asked to sign Non-Disclosure Agreements (NDAs). Recipient may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the Recipient's privacy expectations.]

G. Expectations of an Advisor

The Recipient generally expects an Advisor to adjust their schedule to allow them to attend Recipient meetings/interviews when planned, but the Recipient may change scheduled meetings/interviews to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The Recipient may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview by telephone, video conferencing, or other similar technologies as may be convenient and available.

H. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) [business/school/calendar] days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired). Parties are expected to inform the Title IX Coordinator of the identity of their Advisor for the decision-making meeting (if any) at least two (2) [business/school/calendar] days prior to any such meeting.

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor should be secured.

I. Assistance in Securing an Advisor⁹⁶

[If Recipient provides Advisors in the Resolution Process, please note here.]

The Recipient maintains a listing of local attorneys who may offer discounted or pro bono services here (link).

For representation, Respondents may wish to contact organizations such as:

- Families Advocating for Campus Equality (<http://www.facecampusequality.org>)
- Stop Abusive and Violent Environments (<http://www.saveservices.org>)

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>)
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association
- The Time's Up Legal Defense Fund (<https://nwlc.org/times-up-legal-defense-fund/>)

6. RESOLUTION PROCESSES

Resolution proceedings are private. All persons present at any time during the Resolution Process are expected to maintain the privacy of the proceedings in accordance with Recipient 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, except for information the parties agree not to disclose as part of an Informal Resolution. Recipient encourages parties to discuss any sharing of information with their Advisors before doing so.

The Formal Grievance Process is the Recipient's primary resolution approach unless Informal Resolution is elected by all parties and the Recipient.

⁹⁶ This is being provided for informational purposes and does not constitute an endorsement by the Recipient of any of the external individuals/organizations listed.

A. Informal Resolution

Three options for Informal Resolution are detailed in this section:

- 1) **Supportive Resolution.** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation
- 2) **Alternative Resolution.** When the parties agree to resolve the matter through an alternative resolution mechanism [including mediation, restorative practices, facilitated dialogue, etc.], as described below, often before a formal investigation takes place (See Section B)
- 3) **Accepted Responsibility.** When the Respondent accepts responsibility for violating policy, and desires to accept the recommended sanction(s) and end the Resolution Process (See Section C)

To initiate Informal Resolution, a Complainant must submit a Formal Complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. The parties may agree, as a condition of engaging in Informal Resolution, that statements made, or evidence shared, during the Informal Resolution process will not be considered in any subsequent Formal Grievance Process unless all parties consent.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process. [The parties may not enter into an agreement that requires the Recipient to impose specific sanctions, though the parties can agree to certain restrictions or other courses of action. For example, the parties cannot require a student be suspended, but the parties can agree that the Respondent will transfer to another school. The only Informal Resolution Process that can result in sanctions levied by the school OR district is “Accepted Responsibility.”] The Title IX Coordinator has discretion to determine if an investigation will be paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process.

Prior to implementing Informal Resolution, the Recipient will provide the parties with written notice of the reported misconduct and any sanctions (only in the case of Accepted Responsibility) or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the Recipient.

The Recipient will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

B. Alternative Resolution Approaches

Alternative Resolution is an informal approach [, including mediation or restorative practices, etc.] by which the parties reach a mutually agreed upon resolution of a complaint. All parties must consent to the use of an Alternative Resolution approach.

The Title IX Coordinator may look to the following factors to assess whether Alternative Resolution is appropriate, or which form of Alternative Resolution may be most successful for the parties:

- The parties' preference for Alternative Resolution
- Likelihood of potential resolution, considering any power dynamics between the parties
- The nature and severity of the alleged misconduct
- The parties' motivation to participate
- Civility of the parties
- Results of a violence risk assessment/ongoing risk analysis
- Disciplinary history of the Respondent
- Whether an emergency removal is needed
- Skill of the Alternative Resolution facilitator with this type of allegation
- Complaint complexity
- Emotional investment/capability of the parties
- Goals of the parties
- Adequate resources to invest in Alternative Resolution (time, staff, etc.)

The ultimate determination of whether Alternative Resolution is available or successful is made by the Title IX Coordinator. The Title IX Coordinator is authorized to facilitate a resolution that is acceptable to all the parties and/or to accept a resolution that is proposed by the parties, or through their Advisors, including terms of confidentiality, release, and non-disparagement.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., referral for Formal Resolution, referral to the conduct process for failure to comply). Results of complaints resolved by Alternative Resolution are not appealable.

C. 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 process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the Recipient are able to agree on responsibility, restrictions, and/or remedies. If so, the Title IX Coordinator implements the accepted Determination that the Respondent is in violation of Recipient policy and implements agreed-upon restrictions and remedies and determines the appropriate sanction(s) in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon resolution terms. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.⁹⁷

When a resolution is accomplished, the appropriate sanction(s) or responsive actions are promptly implemented in order to effectively stop the sexual harassment or retaliation, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

7. FORMAL GRIEVANCE PROCESS POOL

The Formal Grievance Process relies on a pool of administrators/staff⁹⁸ (“the Pool”) to carry out the process. [Members of the Pool are announced in an annual distribution of this policy to all students, parents/guardians of students, employees, prospective students, and prospective employees. They are also listed in the Annual Title IX Report published by the Title IX Office.]

The list of Pool members and a description of the Pool can be found at (link).

A. Pool Member Roles

Members of the Pool are trained annually, and can serve in [any of] the following roles, at the discretion of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties

⁹⁷ The parties may not want discussions that take place within Informal Resolution to be admissible in a later Formal Grievance Process, but essential facts must and do transfer from the informal process to the formal. Disclosing something in an informal setting to shield it from formal admissibility is a cynical strategy, so administrators should take care in determining the terms of any assurances of the confidentiality of the Informal Resolution.

⁹⁸ External, trained third-party neutral professionals may also be used to serve in Pool roles.

- [To serve in a facilitation role in Informal Resolution or Alternative Resolution if appropriately trained in appropriate resolution approaches (e.g., mediation, restorative practices, facilitated dialogue, etc.)]
- [To perform or assist with initial assessment]
- To investigate complaints
- To serve as a meeting/hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

B. Pool Member Appointment

The Title IX Coordinator [, in consultation with the Superintendent,] identifies individuals who will serve in the Pool,⁹⁹ which acts with independence and impartiality. [Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different complaints, the Recipient can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.]

C. Pool Member Training

Pool members receive annual training [jointly OR based on their respective roles]. This training includes, but is not limited to:

- The scope of the Recipient's Sexual Harassment Policy and Procedures
- How to conduct investigations, meetings, and hearings in a manner that protects the safety of Complainants and Respondents and promotes accountability
- Implicit bias
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner
- How to conduct a sexual harassment investigation

⁹⁹ This does not preclude the Recipient from having all members of the Pool go through an application and/or interview/selection process.

- Trauma-informed practices pertaining to investigations and resolution processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render Determinations and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the Recipient with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including meetings, hearings, appeals, and Informal Resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias for or against Respondents and/or Complainants, and on the basis of sex, race, religion, and other protected characteristics
- Any technology to be used during an interview/meeting/hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of sexual harassment and/or retaliation allegations
- Recordkeeping

The materials used to train all members of the Pool are publicly posted here [\[insert link\]](#).

D. Pool Membership [Example]

The Pool includes:

- 1 representative/administrator from each school within the district
- 3 or more members of Student Services administration
- 3 or more members of the staff
- 2 representatives from Human Resources
- 2 representatives from Athletics
- 2 representatives from Equity and Inclusion Office

[Pool members are usually appointed to three-year terms. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.]

8. FORMAL GRIEVANCE PROCESS: NOTICE OF INVESTIGATION AND ALLEGATIONS

The Title IX Coordinator will provide written Notice of the Investigation and Allegations (the “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. The NOIA is also copied to the Complainant, who will be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all allegations
- The identity of the involved parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies implicated
- A description of the applicable procedures
- A statement of the potential sanctions/responsive actions that could result
- A statement that the Recipient presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different Determination
- A statement that Determinations are made at the conclusion of the process and that the parties will be given an opportunity during the review and comment period to inspect and review all directly related and/or relevant evidence obtained during the investigation
- A statement about the Recipient’s policy on retaliation
- Information about the privacy/confidentiality of the process
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor
- A statement informing the parties that the Recipient’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Detail on how the party may request disability accommodations during the Resolution Process
- The name(s) of the Investigator(s), along with a process to identify to the Title IX Coordinator, in advance of the interview process, any conflict of interest that the Investigator(s) may have
- An 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 will be made in writing and may be delivered by one or more of the following methods: in person, [mailed to the local or permanent address(es) of the parties as indicated in official Recipient records,]¹⁰⁰ or emailed to the parties' Recipient-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

9. RESOLUTION TIMELINE

The Recipient will make a good faith effort to complete the Resolution Process within a thirty to sixty (30-60)-[business/school/calendar]-day time period, including any appeal. This time frame can be extended as necessary for appropriate cause by the Title IX Coordinator, 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.

10. APPOINTMENT OF INVESTIGATORS

Once the decision to begin a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation [(typically using a team of two Investigators)], usually within two (2) [business/school/calendar] days of determining that an investigation should proceed.

11. ENSURING IMPARTIALITY

Any individual materially involved in the administration of the Resolution Process [including the Title IX Coordinator, Investigator(s), and 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 Coordinator will vet the assigned Investigator(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the Resolution Process, the parties may raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will 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, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with [Title].

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained,

¹⁰⁰ Caution if this is your standard notification practice for employees, as it may serve to notify other individuals living at that address and thus violate the confidentiality provisions of the retaliation section of the regulations.

including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that 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 Recipient operates with a presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

12. INVESTIGATION TIMELINE

The Recipient will make a good faith effort to complete investigations as promptly as circumstances permit. Investigations are normally completed within thirty (30) [business/school/calendar] days, though some investigations may take many weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, law enforcement involvement, etc.

The Recipient will communicate regularly with the parties to update them on the progress and timing of the investigation.

13. INVESTIGATION PROCESS DELAYS AND INTERACTIONS WITH LAW ENFORCEMENT

The Recipient may undertake a short delay in its investigation (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 the provision of accommodations for parties and/or witnesses.

The Recipient will communicate the anticipated duration of the delay and reason to the parties in writing and provide the parties with status updates if necessary. The Recipient will promptly resume its investigation and Resolution Process as soon as feasible. During such a delay, Recipient will implement supportive measures as deemed appropriate.

Recipient action(s) or processes are not typically impacted because civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

14. INVESTIGATION PROCESS STEPS

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

All parties 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. [Recordings of interviews [are OR are not] provided to the parties, [and OR but] the parties will have the ability to review the [transcript OR summary] of the interview once the investigation report is compiled.]

At the discretion of the Title IX Coordinator, investigations can be combined when complaints implicate a pattern, collusion, and/or other shared or similar actions.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with school partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- 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 the parties and witnesses
- Meet with the Complainant to finalize their interview/statement, if necessary
- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
 - Notice should inform the parties of their right to have the assistance of an Advisor [, who could be a member of the Pool, or] of their choosing present for all meetings attended by the party
- 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
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible

- 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
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses, and document in the investigation report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- 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 determination
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- [Gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report]
- 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 Recipient does not intend to rely in reaching a determination, for a ten (10)-[business/school/calendar]-day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) days. [Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant’s Advisor, Respondent’s Advisor).]
- 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
- 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. The Investigator(s) should document all rationales for any changes made after the review and comment period.
- [Share the report with the Title IX Coordinator and/or legal counsel for their review and feedback]
- Incorporate any relevant feedback and share the final investigation report with all parties and their Advisors through secure electronic transmission or hard copy at

least ten (10) [business/school/calendar] days prior to a meeting with the Decision-maker. The parties and Advisors are also provided with a file of any directly related evidence that was not included in the report

15. WITNESS ROLE AND PARTICIPATION IN THE INVESTIGATION

Witnesses (as distinguished from the parties) who are employees of the Recipient are strongly encouraged to cooperate with and participate in the Recipient’s investigation and Resolution Process. Student witnesses and witnesses from outside the Recipient community are encouraged to cooperate with Recipient investigations and to share what they know about a complaint.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., summer break) may require individuals to be interviewed remotely. Skype, Zoom, Microsoft Teams, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness, efficiency, or other reasons dictate a need for remote interviewing. The Recipient will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

16. INTERVIEW RECORDING

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties should be made aware of [and consent to]¹⁰¹ audio and/or video recording.

17. EVIDENTIARY CONSIDERATIONS

Neither the Investigator(s) nor the Decision-maker(s) will consider: (1) incidents not relevant or not directly related to the possible violation, unless they evidence a pattern; or (2) questions and evidence about the Complainant’s sexual predisposition; or (3) questions and evidence about the Complainant’s 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 by the Complainant, or if the questions and

¹⁰¹ Consent of the interviewer and interviewee is required in “dual-party recording” states.

evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the Investigator(s) and Decision-maker(s) can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

18. REFERRAL TO A DECISION-MAKER

Provided that the complaint is not resolved through Informal Resolution, and once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter to a Decision-maker to make a Final Determination regarding responsibility.

The Determination cannot be made prior to ten (10) [business/school/calendar] 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(s) agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker [or Decision-makers] from the Pool and provide a copy of the investigation report and the file of directly related evidence. [Allegations involving student-employees in the context of their employment will be directed to the appropriate Decision-maker depending on the context and nature of the alleged misconduct.]

19. DECISION-MAKER DESIGNATION

The Recipient will designate a single Decision-maker [or a [three-]member panel] from the Pool, at the discretion of the Title IX Coordinator, and inform the parties and their Advisors.

The Decision-maker(s) will not have had any previous involvement with the complaint.

Those who have served as Investigators 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 Coordinator may not serve as a Decision-maker in the matter.

All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator no later than two (2) [business/school/calendar] days after being notified of the identity of the Decision-maker. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial consideration of the evidence.

The Title IX Coordinator will 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 is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

20. NOTICE OF DECISION-MAKING

No less than ten (10) [business/school/calendar] days prior to the Decision-maker rendering their Determination,¹⁰² the Title IX Coordinator or the Decision-maker(s) will send notice to each party. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- 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/responsive actions that could result.
- The time, date, location, and participants for any meeting with the Decision-maker(s).
- Any technology that will be used to facilitate any meeting with the Decision-maker(s).
- The name and contact information of the Decision-maker(s), along with an invitation to object to any Decision-maker on the basis of demonstrated bias or conflict of interest. This must be raised with the Title IX Coordinator at least two (2) [business/school/calendar] days prior to the meeting.
- Information on whether the meeting will be recorded and, if so, information on access to the recording for the parties after the meeting.
- [A statement that if any party does not appear at the scheduled meeting, the meeting will only be rescheduled for compelling reasons.]
- Notification that the parties may have the assistance of an Advisor of their choosing at the meeting.
- A copy of all the materials provided to the Decision-maker(s) about the complaint unless they have already been provided.¹⁰³
- An invitation for the parties to review and submit a written response to the final investigation report within [3/5/7] [business/school/calendar] days of the date of the notice.
- 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

¹⁰² Unless an expedited time frame is agreed to by all parties.

¹⁰³ The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

[3/5/7] [business/school/calendar] days of the date of the notice.

- An invitation to each party to submit to the Decision-maker an impact/mitigation statement that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator 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 [3/5/7 business/school/calendar] days prior to the meeting/Determination.
- Whether parties can/cannot bring mobile phones/devices into any meetings with the Decision-maker(s).

Meetings for possible violations that occur near or after the end of a school year (assuming the Respondent is still subject to this Policy) 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. Recipient will implement appropriate supportive measures intended to correct and prevent any potential hostile environment while the resolution is delayed.

21. ADDITIONAL EVIDENTIARY CONSIDERATION 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: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Complainant's sexual predisposition; or 3) questions and evidence about the Complainant's 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.

Except in pattern investigations, previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a Determination of responsibility [assuming the Recipient uses a progressive discipline system]. 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/mitigation statement for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

The Decision-maker(s) render(s) a Determination based on [the preponderance of the evidence;

whether it is more likely than not that the Respondent violated the Policy as alleged. OR clear and convincing evidence; whether there is a high probability that the Respondent violated the Policy as alleged].

22. EXCHANGE OF QUESTIONS

The Decision-maker(s) will facilitate the exchange of written questions between the parties and direct any written questions to any witnesses before a Determination is made.

The Decision-maker(s) will invite each party to submit proposed written questions for other parties/witnesses. Upon receipt of the proposed questions, the Decision-maker(s) will review the proposed questions and determine which questions will be permitted, disallowed, or rephrased. The Decision-maker(s) will limit or disallow questions on the basis that they are irrelevant, repetitive (and thus irrelevant), or abusive. Decision-makers have full authority to decide all issues related to questioning and determinations of relevance. The Decision-maker(s) may ask a party to explain why a question is or is not relevant from their perspective. The Decision-maker(s) will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker(s), after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the parties and witnesses with the relevant written questions to be answered and allow for a period of time whereby the parties and witnesses are 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 will be concluded within a [3/5/7/10] [business/school/calendar]-day period. The Decision-maker(s) may extend this time frame at their discretion.

23. DECISION-MAKER MEETING PROCEDURES

The Decision-maker(s) may choose to meet with each party individually and any witnesses, as needed, prior to making a Final Determination, [or to meet with the parties jointly].¹⁰⁴

¹⁰⁴ In determining whether to incorporate an in-person meeting at this point, schools should consider whether a meeting at this step can substitute for a meeting/hearing that may subsequently be required in your process in accordance with school/district policy and/or state law (e.g., if suspension or expulsion longer than 10 days is recommended as a sanction). This will help to streamline the resolution process and timeline for those complaints. If a recipient intends to use existing hearing procedures, those may need to be modified to satisfy the Title IX regulatory requirements.

Participants at a meeting may include the Decision-maker(s), [the Investigator(s) who conducted the investigation,] the party/witness, the party's Advisor, [the Title IX Coordinator,] the parent/guardian, and anyone providing authorized accommodations or assistive services.

At a meeting, Decision-maker(s) have the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sexual harassment and/or retaliation, even though those collateral allegations may not specifically fall within the Policy.

Any witness scheduled to meet with the Decision-maker(s) must have been first interviewed by the Investigator(s) [or have proffered a written statement or answered written questions], unless all parties and the Decision-maker(s) assent to the witness's participation.

If the parties and Decision-maker(s) do not assent to the admission of evidence newly offered at the meeting, the Decision-maker(s) may delay the meeting and instruct that the investigation needs to be re-opened to consider that evidence.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the meeting, the Decision-maker(s) may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the meeting, the Decision-maker should not permit irrelevant questions that probe for bias.

24. DELIBERATION, DECISION-MAKING, AND STANDARD OF PROOF

The Decision-maker(s) will deliberate to determine whether the Respondent is responsible for the policy violation(s) in question. [If a panel is used, a simple majority vote is required to make a determination.] The preponderance of the evidence OR clear and convincing evidence standard of proof is used.

When there is a determination of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact and/or mitigation statement(s) in determining appropriate sanction(s). The Decision-maker(s) will ensure that each of the parties have an opportunity to review any impact and/or mitigation statement(s) once they are submitted.

The Decision-maker(s) will review any pertinent conduct history provided by [appropriate administrator] and will [recommend/determine] the appropriate sanction(s) [in consultation with other appropriate administrators, as required].

The Decision-maker(s) will then prepare a written deliberation statement detailing all

Determinations, the rationales explaining the decision(s), the evidence used in support of the Determination(s), the evidence not relied upon in the Determination(s), any credibility assessments, and any sanctions [or recommendations] and rationale explaining the sanction(s) and will deliver this written statement to the Title IX Coordinator.

This statement must be submitted to the Title IX Coordinator within two (2) [business/school/calendar] days after the Decision-maker(s) held their final meeting with the parties/witnesses or concluded the paper evidence exchange/questioning process, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

25. NOTICE OF OUTCOME

Using the deliberation statement, the Title IX Coordinator will work with the Decision-maker(s) to prepare a Notice of Outcome letter. [The Notice of Outcome will then be reviewed by legal counsel.] The Title IX Coordinator will then share the letter, which includes the Determination, rationale, and any applicable sanction(s), with the parties and their Advisors within 3/5/7 [business/school/calendar] days of receiving the deliberation statement.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Recipient records,¹⁰⁵ or emailed to the parties' Recipient-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific alleged policy violation(s), including the relevant policy section(s), and will contain a description of the procedural steps taken by the Recipient 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 meetings/hearings held.

The Notice of Outcome will specify the determination for each alleged policy violation; the facts 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 Recipient is permitted to share such information under state or federal law; any sanction(s) issued which the Recipient is permitted to share according to state or federal law; and whether remedies will be provided to the Complainant to ensure access to the Recipient's educational or employment program or activity.

¹⁰⁵ Again, consider the privacy implications of sending mail to an employee's home address.

The Notice of Outcome will also include information on when the results are considered final by the Recipient, will note any changes to the outcome and/or sanction(s) that occur prior to finalization, and the relevant procedures and bases for appeal.

26. RIGHTS OF THE PARTIES (SEE APPENDIX C)

27. SANCTIONS

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the sexual harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment and/or retaliation
- The need to remedy the effects of the sexual harassment and/or retaliation on the Complainant and the school community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

A. Student Sanctions [Example]

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

- Warning
- Required Counseling
- Required substance abuse treatment program
- Exclusion from participating in extra-curricular activities or other school OR district programs/activities
- Alternative placement

- Suspension: In-school; out-of-school; long-term; short-term; extended, etc.
- Expulsion
- Other Actions: In addition to or in place of the above sanctions, the Recipient may assign any other sanctions as deemed appropriate.

B. Employee Sanctions/Responsive/Corrective Actions

Responsive actions for an employee who has engaged in harassment and/or retaliation include:

- Verbal or Written Warning
- Performance Improvement Plan/Management Process
- Enhanced Supervision, Observation, or Review
- Required Counseling
- Required Training or Education
- Probation
- Denial of Pay Increase/Pay Grade
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Transfer
- Reassignment
- Assignment to New Supervisor
- Restriction of Stipends, Research, and/or Professional Development Resources
- Suspension/Administrative Leave with Pay
- Suspension/Administrative Leave without Pay
- Termination
- Other Actions: In addition to or in place of the above sanctions/responsive actions, the Recipient may assign any other responsive actions as deemed appropriate.

C. [Student Organization Sanctions]

The following are the common sanctions that may be imposed upon student organizations singly or in combination:

- Warning
- Loss of Recognition: Temporary or permanent termination of recognition of the student organization for a specified period of time
- Loss of Privileges: Restricted from accessing specific Recipient privileges for a specified period of time

- Other Actions: In addition to or in place of the above sanctions, the Recipient may assign any other sanctions as deemed appropriate.]

28. WITHDRAWAL OR RESIGNATION BEFORE COMPLAINT RESOLUTION

A. Students

Should a student Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the Recipient, The Resolution Process typically ends with dismissal, as the Recipient has lost primary disciplinary jurisdiction over the withdrawn student. However, the Recipient may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged sexual harassment and/or retaliation.

Regardless of whether the complaint is dismissed or pursued to completion of the Resolution Process, the Recipient will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation.

[Private/Independent Schools: The student who withdraws or leaves while the process is pending may not return to the Recipient in any capacity.¹⁰⁶ Such exclusion applies to all Recipient locations. Admissions and school administrators will be notified, accordingly. If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue remotely and, if found in violation, that student is not permitted to return to Recipient unless and until all sanctions, if any, have been satisfied.]

B. Employees

Should an employee Respondent resign with unresolved allegations pending, the Resolution Process typically ends with dismissal, as the Recipient has lost primary disciplinary jurisdiction over the resigned employee. However, the Recipient may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged sexual harassment and/or retaliation.

¹⁰⁶ Could OCR see this as a penalty? No idea, so best to confer with your counsel on this section before including.

Regardless of whether the complaint is dismissed or pursued to completion of the Resolution Process, the Recipient will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the Recipient or any Recipient location, and the records retained by the Title IX Coordinator will reflect that status. Any state mandates for reporting of this resignation with respect to licensure or certification will be met.

[All Recipient responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter [or insert state-based legal requirements, here].]

29. APPEALS

Any party may submit a written request for appeal (“Request for Appeal”) to the Title IX Coordinator within [3,5,7] [business/school/calendar] days of the delivery of the Notice of Outcome.

[A [three]-member appeal panel chosen from the Pool will be designated by the Title IX Coordinator OR a single Appeal Decision-maker will Chair the appeal.] No [Appeal [Decision-maker(s)]] will have previously been involved in the Resolution Process for the complaint, including in any dismissal appeal that may have been heard earlier in the process. [A voting Chair of the Appeal panel will be designated by the Title IX Coordinator.]

The Request for Appeal will be forwarded to the Appeal Chair or designee for consideration to determine if the request meets the grounds for appeal (a Review for Standing). 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 timely filed.

A. Grounds for Appeal

Appeals are limited to the following grounds:

- 1) A procedural irregularity that affected the outcome of the matter
- 2) New evidence that was not reasonably available at the time the Determination or dismissal was made, that could affect the outcome of the matter

- 3) The Title IX Coordinator, 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 Policy, 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 Policy, then the Appeal Chair will notify all parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s).

All other parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the Request for Appeal with the approved grounds and then be given 3/5/7/? [business/school/calendar] days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, will be forwarded by the Appeal Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that will be reviewed to determine if it meets the grounds of this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, and the Investigator(s), and/or original Decision-maker(s), as necessary, who will submit their responses, if any, within 3/5/7/? [business/school/calendar] days, which will be circulated for review and comment by all parties. If not approved, the parties will be notified accordingly, in writing.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds for appeal and the subsequent responses [will be shared with the Appeal Panel,] and the [Chair/Panel] will render a decision in no more than 3/5/7/? [business/school/calendar] days, barring unusual circumstances. [All decisions [are by majority vote] and apply the preponderance of the evidence OR the clear and convincing evidence standard].

A Notice of Appeal Outcome will be sent to all parties simultaneously. The Notice of Appeal Outcome will specify the determination on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that may result which the Recipient is permitted to share according to state or federal law, and the rationale supporting the essential determinations to the extent the Recipient is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' Recipient-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

B. Sanctions Status During the Appeal

Any sanctions imposed as a result of the Determination are not implemented during the appeal process. Supportive measures may remain in effect or be reinstated during an appeal process, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately after the determination by the Decision-maker(s), but prior to the conclusion of the appeal process, then the emergency removal procedures (detailed above) for a show cause meeting on the justification for doing so must be permitted within 48 hours of implementation.

C. Appeal Considerations

- Appeals are not intended to provide for a full reconsideration of the allegation(s) and evidence. In most cases, appeals are confined to a review of the written documentation, investigation report, record of any meetings with the original decision-maker(s), and/or pertinent documentation regarding the specific grounds for appeal.
- Decisions on appeal are to be deferential to the original determination, making changes to the determination only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- 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).
- The Appeal Chair/Decision-maker(s) may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded or partially remanded (returned) to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- 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). [Option: When appeals result in no change to the determination or sanction, that decision is final. When an appeal results in a new determination or sanction, that determination or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.]
- In rare cases where an error cannot be cured by the original Investigator(s) or

Decision-maker(s) (as in cases of bias), the Appeal Chair/Decision-maker(s) may order a new investigation and/or a new decision-making process with a new Pool members serving in the Investigator and Decision-maker roles.

- [The results of a remand to a Decision-maker(s) cannot be appealed.] The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases that result in reinstatement to the Recipient or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

30. LONG-TERM REMEDIES/OTHER ACTIONS

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the school OR district community that are intended to stop the sexual harassment and/or retaliation, remedy the effects, and prevent reoccurrence.

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

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- [Permanent alteration of housing assignments]
- Permanent alteration of work arrangements for employees
- Provision of school safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation changes
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support 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 Coordinator will address any remedies the Recipient owes the Respondent to ensure no effective denial of educational access.

The Recipient will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair the Recipient's ability to provide these services.

31. FAILURE TO COMPLY WITH SANCTIONS/ RESPONSIVE ACTIONS/CORRECTIVE ACTIONS

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair/Decision-maker(s)).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the Recipient. Supervisors are expected to enforce completion of sanctions/responsive actions for their employees.

32. RECORDKEEPING

Recipient will maintain for a period of [at least] seven years following the conclusion of the Resolution Process, records of:

- 1) Each sexual harassment investigation including any Determination 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 Recipient'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, and any person who facilitates an Informal Resolution process. Recipient will make these training materials publicly available on Recipient's website. (Note: If the Recipient does not maintain a website, the Recipient must make these materials available upon request for inspection by members of the public.)
- 7) Any actions, including any supportive measures, taken in response to a report or Formal Complaint of 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 Recipient's education program or activity
 - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances

Recipient will also maintain any and all records in accordance with state and federal laws.

33. DISABILITIES ACCOMMODATIONS IN THE RESOLUTION PROCESS

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

Anyone needing such accommodations or support should contact the Director of Disability/Access Services or [Appropriate HR individual if employee], who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

34. REVISION OF THIS POLICY AND PROCEDURES

This Policy and procedures supersede any previous policies addressing sexual harassment, sexual assault, dating violence, domestic violence, sex or gender-based stalking and/or retaliation for incidents occurring on or after August 14, 2020, under Title IX and will be reviewed and updated annually by the Title IX Coordinator. The Recipient reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the Resolution Process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require Policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change—or court decisions alter—the requirements in a way that impacts this document, this document will be construed to comply with the most recent laws, government regulations, or court holdings.

This document does not create legally enforceable protection beyond the protections of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective [INSERT DATE].

APPENDIX A: PROHIBITED CONDUCT EXAMPLES (TITLE IX)
THE 2021 ATIXA SEXUAL HARASSMENT MODEL POLICY AND PROCEDURES (AMPP)
FOR K-12 SCHOOLS AND DISTRICTS

Examples of possible Sexual Harassment:¹⁰⁷

- A teacher offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student agrees to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends graphic, sexually oriented jokes and pictures to hundreds of other students via social media. Many don't find it funny and ask them to stop, but they do not. Because of these jokes, one student avoids the sender in school, eventually asking to be moved from a class they had together.
- A teacher engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The teacher inquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.
- An ex-partner widely spreads false stories about their sex life with their former partner to the clear discomfort and frustration of the former partner, turning the former partner into a social outcast in the office.
- Chris has recently transitioned from male to nonbinary, but primarily expresses as a female. Since their transition, Chris has noticed that a teacher in their building, Eryn, pays them a lot more attention. Chris is sexually attracted to Eryn and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Eryn during her planning period, and after a long conversation about being nonbinary, Chris kisses Eryn. Eryn is taken aback, stops the kiss, and tells Chris not to do that. Eryn explains to Chris that she is not sexually or romantically interested in Chris. Chris takes it hard, crying to Eryn about how hard it is to find someone who is interested in them now based on their gender identity. Eryn feels sorry for Chris and softens the blow by telling them that no matter whether they like Chris or not, teacher-administrator relationships are discouraged by the school district. Chris takes this as encouragement.

One night, Chris goes to a gay bar some distance from the school and sees Dr. Eryn there. Chris tries to buy Eryn a drink and, again, tries to kiss Eryn. Eryn leaves the bar abruptly. The next day, Chris makes several online posts that out Eryn as LGBTQ and raise questions about whether she is sexually involved with students. Eryn contacts the Title IX Office and alleges that Chris is sexually harassing her.

Examples of Stalking

¹⁰⁷ ATIXA recommends incorporation of examples into policy as an educational and preventive tool. Some schools may prefer to break these out into separate documents or resources.

- Students A and B were “friends with benefits.” Student A wanted a more serious relationship, which caused student B to end the relationship. Student A could not let go and relentlessly pursued Student B. Student B obtained a school no-contact order. Subsequently, Student B discovered their social media accounts were being accessed, and things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a picture of a penis, making it look as if Student B had sent out a picture of themselves, though it was not their penis. This caused them considerable embarrassment and social anxiety. They changed their passwords, only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on their phone and a keystroke recorder on their laptop, both of which were being used to transmit their data to a third party.
- A graduate student working as student-teacher received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and they would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the student-teacher’s car, both on school grounds and at home. Asked again to stop, the student stated by email, “You can ask me to stop, but I’m not giving up. We are meant to be together, and I’ll do anything to make you have the feelings for me that I have for you.” When the student-teacher did not respond, the student emailed again, “You cannot escape me. I will track you to the ends of the earth. If I can’t have you, no one will.”

Examples of Sexual Assault:

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come to his house. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being “a prude.” He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to “jerk him off” (hand to genital contact). Amanda would have never done it but for Bill's incessant coercion.
- Jiang and Beth sit next to each other in their film elective. Whenever the lights are out and the class is watching a film, Beth tries to fondle Jiang. Jiang is uncomfortable but does not say anything. He repeatedly tries to remove Beth’s hand, but she continues the behavior despite his resistance and lack of consent.

- Kevin and John convince Stacy to snap them a pic of her butt. She reluctantly sends it to them. The boys then tell her that if she doesn't meet them in the back stairwell between classes for "oral," they will send her snap out to the whole school. Stacy agrees to do it, feeling that she had no choice.

Examples of Retaliation:

- A student-athlete alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete's playing time without a legitimate justification.
- A teacher alleges gender inequity in pay within her department; the Department Chair then revokes his approval for her to attend a national conference, citing the teacher's tendency to "ruffle feathers."
- A student from the chess club participates in a sexual harassment investigation as a witness whose testimony is damaging to the Respondent, who is also a member of the chess club; the student is subsequently removed as a member of the chess club because of their participation in the investigation.

**APPENDIX B: A SUGGESTED FRAMEWORK FOR INFORMAL
RESOLUTION (IR)**
THE 2021 ATIXA SEXUAL HARASSMENT MODEL POLICY AND PROCEDURES (AMPP)
FOR K-12 SCHOOLS AND DISTRICTS

ATIXA has framed a process for IR that includes three options:

- 1) A response based on supportive measures
- 2) A response based on a Respondent accepting responsibility
- 3) A response based on alternative resolution, which could include various approaches and facilitation of dialogue

Alternative resolution approaches such as mediation, restorative practices, and transformative justice are likely to be used more and more often by colleges and universities. ATIXA does not endorse these approaches as better or worse than other formal or informal approaches.

ATIXA believes that if they are to be used in, and are effective for, sex offenses, they need to be carefully and thoughtfully designed and executed and be facilitated by well-trained personnel who take the necessary time to prepare and lay a foundation for success. Although no approach is a panacea, the framework below can help to lay that foundation, regardless of which approach(es) are used.

Here are the principles to be considered in supporting various approaches to Informal Resolution:

- IR can be applied in any sex/gender-based interpersonal conflict but may not be appropriate or advisable in cases involving violent incidents (sexual violence, stalking, domestic and dating violence, severe sexual harassment, sexual exploitation, etc.)
- Situations involving dangerous patterns or significant ongoing threat to the community should not be resolved by IR.
- The determination of whether to permit an IR-based resolution is entirely at the discretion of the Title IX Coordinator (TIXC) and in line with the requirements for IR laid out in the Title IX regulations.
- Any party can end IR early-, mid-, or late-process for any reason or no reason.
- IR can be attempted before and in lieu of formal resolution as a diversionary resolution (although a Formal Complaint must be filed if you are within 34 C.F.R. § 106.30, per OCR).
- Alternative approaches can inform formal resolution, as in a formal resolution model infused with restorative practices.
- IR could be deployed after formal resolution, as an adjunct healing/catharsis opportunity (that could potentially mitigate sanctions or be a form of sanction).
- Alternative Resolution approaches to IR must be facilitated by the Recipient or a third-party. There may be value in creating clearly agreed-upon ground rules, which the parties must sign in advance and agree to abide by, otherwise the Informal Resolution process may be deemed to have failed.
- Technology-facilitated IR can be made available, should the parties not be able or willing to meet in person.
- If IR fails, a formal resolution can take place thereafter. Evidence elicited within the “safe space” of the IR facilitation could be later admissible in the formal resolution unless all

parties determine it should not be. This will be clearly spelled out as a term of the decision to engage in the IR process.

- With cases involving violence, the preferred alternative approach typically involves a minimal number of essential parties and is not a restorative circle approach with many constituents, in order to ensure privacy.
- Some approaches require a reasonable gesture toward accountability (this could be more than an acknowledgement of harm) and some acceptance, or at least recognition, by the Respondent that catharsis is of value and likely the primary goal of the Complainant. A full admission by the Respondent is not a prerequisite. This willingness needs to be vetted carefully in advance by the TIXC before determining that an incident is amenable/appropriate for resolution by IR.
- IR can result in an accord or agreement between the parties (Complainant, Respondent, Recipient), which is summarized in writing by and enforced by the Recipient. This can be a primary goal of the process.
- IR can result in the voluntary imposition of safety measures, remedies, and/or agreed-upon resolutions by the parties that are enforceable by the Recipient. These can be part of the agreement.
- As a secondary goal, IR can result in the voluntary acceptance of “sanctions,” meaning that a Respondent could agree to withdraw, self-suspend (by taking a leave of absence), or undertake other restrictions/transfers/online course options that would help to ensure the safety/educational access of the Complainant, in lieu of formal sanctions that would create a formal record for the Respondent. These are enforceable by the Recipient as part of the agreement, as may be terms of mutual release, non-disparagement, and/or non-disclosure.
- Although a non-disclosure agreement (NDA) could result from IR, it would have to be mutually agreed-upon by the parties in an environment of non-coercion verified by the TIXC.
- Schools/Districts must develop clear rules for managing/facilitating the conference/meeting/dialogue of alternative resolution approaches, to ensure they are civil, age-appropriate, culturally competent, reflective of power imbalances, and maximize the potential for the Resolution Process to result in catharsis, restoration, remedy, etc., for the Complainant(s).

APPENDIX C: STATEMENT OF RIGHTS OF THE PARTIES
THE 2021 ATIXA SEXUAL HARASSMENT MODEL POLICY AND PROCEDURES (AMPP)
FOR K-12 SCHOOLS AND DISTRICTS

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or retaliation made in good faith to Recipient officials.
- 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.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information by the Recipient regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public by the Recipient without consent provided, except to the extent permitted by law.
- The right to be treated with respect by Recipient officials.
- The right to have Recipient policy and these procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by Recipient officials from reporting sexual harassment or retaliation to both school and local authorities.
- The right to be informed by Recipient officials of options to notify proper law enforcement authorities, including in-school and local police, and the option(s) to be assisted by Recipient officials in notifying such authorities, if the party so chooses. This also includes the right not to report, as well, except when Recipient officials are required to report by law.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by Recipient law enforcement and/or other Recipient officials.
- The right to a Recipient-implemented no-contact order [or a no-trespass order against a non-affiliated third party] when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.

- The right to be informed of available assistance in changing academic, [living,] and/or working situations after an alleged incident of sexual harassment and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either school or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
 - [Counseling
 - Referrals to advocacy services
 - Referrals for health/medical care
 - Relocating a student's housing to a different location
 - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
 - Transportation assistance
 - Visa/immigration assistance
 - Exam, paper, and/or assignment rescheduling or adjustment
 - Transferring class sections
 - Temporary leave of absence
 - School safety escorts and/or safety plans
 - Alternative course completion options]
- The right to have the Recipient maintain such actions for as long as necessary and for supportive measures to remain confidential, provided confidentiality does not impair the Recipient's ability to provide the supportive measures.
- The right to receive sufficiently advanced, written notice of any Recipient meeting or interview involving another party, when possible.
- The right to identify and have the Investigator(s) and/or Decision-maker(s) question relevant available witnesses, including expert witnesses.
- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Decision-maker(s), may be asked of any party or witness.
- The right to have inadmissible sexual predisposition/prior history, or irrelevant character evidence excluded by the Decision-maker(s).
- The right to know the relevant and directly related evidence obtained during the investigation and to respond to that evidence.
- The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.

- The right to receive a copy of the final investigation report, including all factual, policy, and/or credibility analyses performed, and have at least ten (10) [business/school/calendar] days to review and comment on the report prior to any determination being made.
- The right to be informed of the names of all witnesses whose information will be used to make a determination, in advance of that determination, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received [at least eight hours of] relevant annual training.
- [The right to a Decision-maker Panel that is not single-sex in its composition, if a panel is used.]
- The right to preservation of confidentiality/privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any Recipient representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the Resolution Process.
- The right to the use of the appropriate standard of evidence, [preponderance of the evidence OR clear and convincing evidence] to make a Determination after an objective evaluation of all relevant evidence.
- [The right to have an impact and/or mitigation statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.]
- The right to be promptly informed of the Determination and sanction(s) (if any) of the Resolution Process and a detailed rationale of the decision (including an explanation of how credibility was assessed) in a written Notice of Outcome letter delivered simultaneously (without undue delay) to the parties.

- The right to be informed in writing of when a decision by the Recipient is considered final and any changes to the determination or sanction(s) that occur after the Notification of Outcome is sent.
- The right to be informed of the opportunity to appeal the determination and sanction(s) of the Resolution Process, and the procedures for doing so in accordance with the standards for appeal established by the Recipient.
- The right to a fundamentally fair resolution as defined in these procedures.

APPENDIX D: MODEL UNETHICAL RELATIONSHIPS POLICY
THE 2021 ATIXA SEXUAL HARASSMENT MODEL POLICY AND PROCEDURES (AMPP)
FOR K-12 SCHOOLS AND DISTRICTS

EXPECTATIONS REGARDING EMPLOYEE UNETHICAL RELATIONSHIPS¹⁰⁸

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student or supervisor and employee). In reality, these relationships may be less consensual than perceived by the individual whose position confers power or authority. Similarly, the relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Circumstances may change, and conduct that was once welcome may, at some point in the relationship, become unwelcome.

Even when both parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a relevant Policy violation still exists. The Recipient does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the Recipient. However, for the personal protection of members of this community, relationships in which power differentials are inherent (e.g., supervisor-employee) are generally discouraged. They may also violate standards of professionalism and/or professional ethics.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Therefore, persons with direct supervisory or otherwise evaluative responsibilities who are involved in such relationships must bring these relationships to the timely attention of their supervisor and/or the Title IX Coordinator. The existence of this type of relationship will likely result in removing the supervisory or evaluative responsibilities from the employee or shifting a party from being supervised or evaluated by someone with whom they have established a consensual relationship. When an affected relationship existed prior to adoption of this policy, the duty to notify the appropriate supervisor still pertains.

While no employee-employee relationships are specifically prohibited by this Policy, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee. The Title IX Coordinator will determine whether to refer violations of this provision to Human Resources for resolution, or to pursue resolution under this Policy, based on the circumstances of the allegation.

¹⁰⁸ This section is offered as an optional inclusion, as some schools prefer to include this policy elsewhere, such as an employee manual. We include it here to inform the school community, not just employees, of our expectations. Regardless, violation of this policy is a Human Resources/Employee Relations matter and should not be addressed under this resolution process unless the elements of the definition of sexual harassment or retaliation are met.

APPENDIX E: VIOLENCE RISK ASSESSMENT (VRA)
THE 2021 ATIXA SEXUAL HARASSMENT MODEL POLICY AND PROCEDURES (AMPP)
FOR K-12 SCHOOLS AND DISTRICTS

Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A ***Violence Risk Assessment (VRA)*** is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and/or other Behavioral Intervention Team (BIT) (sometimes also known as CARE teams) members.

A VRA occurs in collaboration with the BIT, CARE, and/or threat assessment team and must be understood as an ongoing process, rather than a singular evaluation or meeting. In cases where the Respondent is a student with a disability who is receiving services under an Individualized Educational Plan (IEP), a VRA should also occur in collaboration with the student's IEP Team. A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

- 1) An appraisal of ***risk factors*** that escalate the potential for violence
- 2) A determination of ***stabilizing influences*** that reduce the risk of violence
- 3) A contextual ***analysis of violence risk*** by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence
- 4) The application of ***intervention and management*** approaches to reduce the risk of violence

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through the BIT. The BIT will assign a trained individual(s) to perform the assessment, according to the specific nature of the Title IX case.

The assessor(s) will follow the process for conducting a violence risk assessment as outlined in the BIT manual and will rely on a consistent, research-based, reliable system that allows for the evaluation of the risk levels.

Some examples of formalized approaches to the VRA process include: The NABITA Risk Rubric,¹⁰⁹ The Structured Interview for Violence Risk Assessment (SIVRA-35),¹¹⁰ Looking Glass,¹¹¹ Workplace Assessment of Violence Risk (WAVR-21),¹¹² Historical Clinical Risk Management (HCR-20),¹¹³ and MOSAIC.¹¹⁴

The VRA is conducted independently from the Title IX process, informed by it, but free from pressure to result in a specific outcome. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The BIT/CARE or threat team's member(s) conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to the health and/or safety of an individual or the community.

¹⁰⁹ www.nabita.org/tools

¹¹⁰ www.nabita.org/resources/assessment-tools/sivra-35/

¹¹¹ www.nabita.org/looking-glass

¹¹² www.wavr21.com

¹¹³ hcr-20.com

¹¹⁴ www.mosaicmethod.com

APPENDIX F: TITLE IX POLICY STATEMENT SAMPLE TEMPLATE
THE 2021 ATIXA SEXUAL HARASSMENT MODEL POLICY AND PROCEDURES (AMPP)
FOR K-12 SCHOOLS AND DISTRICTS

Recipient adheres to all federal, state, and local civil rights laws prohibiting discrimination in employment and education. The Recipient does not discriminate in its admissions practices [except as permitted by law], in its employment practices, or in its education programs or activities on the basis of sex/gender.¹¹⁵ As a recipient of federal financial assistance for education activities, Recipient is required by Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities do not discriminate on the basis of sex/gender. Sex includes [sex, sex stereotypes, gender identity, gender expression, sexual orientation, and pregnancy or parenting status].

Recipient also prohibits retaliation against any person opposing discrimination or participating in any discrimination investigation or complaint process internal or external to the institution. Sexual harassment, sexual assault, dating and domestic violence, and stalking are forms of sex discrimination, which are prohibited under Title IX and by Recipient policy.

Any member of the institutional community, guest, or visitor who acts to deny, deprive, or limit the educational, employment, residential, or social access, opportunities and/or benefits of any member of the Recipient community on the basis of sex is in violation of the [name of policy].

Any person may report sex discrimination (whether or not the person reporting is the person alleged to have experienced the conduct), in person, by mail, by telephone, by video, or by email, using the contact information listed for the Title IX Coordinator (below). A report may be made at any time (including during non-business hours) by [indicate method].

Questions regarding Title IX, including its application and/or concerns about noncompliance, should be directed to the Title IX Coordinator. For a complete copy of the policy or for more information, please visit [link] or contact the Title IX Coordinator.

Individuals who believe they have experienced sex discrimination, harassment, and/or retaliation in violation of Recipient policy should contact the following:

- **[Individual with Oversight for All Non-Discrimination]**
Office Location
Mailing Address
Telephone:
Email:

¹¹⁵ Insert other protected characteristics/reporting resources if this statement will be used to more broadly address discrimination beyond Title IX.

- **[Title IX Coordinator]**
Office Location
Mailing Address
Telephone:
Email:

A person may also file a complaint with the appropriate federal, state, or local agency within the time frame required by law. Depending upon the nature of the complaint, the appropriate agency may be the federal Equal Employment Opportunity Commission (EEOC), the U.S. Department of Education Office for Civil Rights (OCR), the Department of Justice, and/or the [appropriate state agency].

- **[State Non-Discrimination Entity]**
- **[EEOC Field Office]**
- **[OCR District/Field Office or appropriate office for each applicable agency]**
- **Assistant Secretary for Civil Rights**
Office for Civil Rights, National Headquarters
U.S. Department of Education
Lyndon Baines Johnson Dept. of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100
Telephone: 800-421-3481
Fax: 202-453-6012; TDD: 800-877-8339
Email: OCR@ed.gov

Within any Resolution Process related to this Policy, Recipient provides reasonable accommodations to persons with disabilities and religious accommodations, when that accommodation is consistent with state and federal law.

Short/Blurb Format:

Recipient does not discriminate in its employment practices or in its educational programs or activities on the basis of sex/gender.¹¹⁶ Recipient also prohibits retaliation against any person opposing discrimination or participating in any discrimination investigation or complaint process internally or externally. Reports of misconduct, questions regarding Title IX, and concerns about noncompliance should be directed to the Title IX Coordinator. For a complete

¹¹⁶ Insert other protected characteristics/reporting resources if this statement will be used to more broadly address discrimination beyond Title IX.

copy of the policy or for more information, please contact the Title IX Coordinator or the Assistant Secretary of Education within the Office for Civil Rights (OCR). [\[link\]](#)

**APPENDIX G: ATIXA RECORD MAINTENANCE AND ACCESS MODEL
POLICY**

THE 2021 ATIXA SEXUAL HARASSMENT MODEL POLICY AND PROCEDURES (AMPP)
FOR K-12 SCHOOLS AND DISTRICTS

Policy Scope:

This policy covers records maintained in any medium that are created pursuant to the Recipient's [name of policy] and/or the regular business of the Recipient's Title IX Office. All such records are considered private or confidential by the Title IX Office, in accordance with FERPA and the directive from the Department of Education to maintain the confidentiality of records related to Title IX. These records may be shared internally with those who have a legitimate educational interest and will be shared with the parties to a complaint under applicable local, state and/or federal law, including the Title IX regulations and FERPA. The Title IX Office controls the dissemination and sharing of any records under its control.

Types of Records Covered Under this Policy:

Records Pertaining to the Resolution Process. These records include, but are not limited to:

- Documentation of notice to the institution including incident reports
- Anonymous reports later linked to a specific incident involving known parties
- Any documentation supporting the initial assessment
- Investigation-related evidence (e.g., physical and documentary evidence collected and interview transcripts)
- Dismissal-related documentation
- Documentation related to the Resolution Process
- The final investigation report
- Remedy-related documentation
- Supportive measures-related documentation
- Interview/Meeting recordings and records
- Appeal-related documentation
- Informal resolution records
- Notices of Outcome
- Records documenting that the Recipient's response was not deliberately indifferent
- Any other records typically maintained by the Recipient as part of the case file

Specific examples of records pertaining to the Resolution Process may include, but are not limited to: anonymous reports later identified; intake documentation; incident reports; the written complaint; the names of the Complainant, the Respondent; any witnesses; any relevant statements or other evidence obtained; interview notes or transcripts; timelines, templates and other forms used in the investigation process; witness lists, correspondence, telephone logs, evidence logs and other documents related to the processing of an investigation; correspondence relating to the substance of the investigation; supportive measures implemented on behalf of the Complainant or Respondent; actions taken to restrict/remove

the Respondent; correspondence with the parties; medical, mental health, medical, and forensic record evidence obtained with consent during the course of the investigation; police reports; expert sources used in consideration of the evidence; documentation of outcome and rationale; correspondence and documentation of the appeals process; documentation of any sanctions/discipline resulting from the Resolution Process; and documentation of reported retaliatory behavior as well as all actions taken to address these reports.

Drafts and Working Files: Preliminary drafts and “working files” are not considered records that must be maintained by the Recipient, and these are typically destroyed during the course of an investigation or at the conclusion of the Resolution Process. They are preliminary versions of records and other documents that do not state a final position on the subject matter reviewed or are not considered to be in final form by their creator and/or the Title IX Coordinator. An example of a “working file” would be the investigator notes made during one interview with topics the investigator wants to revisit in subsequent interviews. Sole possession records maintained as such in accordance with FERPA are also included in this category. All drafts of investigation reports shared with the parties are maintained.

Attorney Work-Product: Communications from the Title IX Office or its designees with the Recipient’s legal counsel may be work product protected by attorney-client privilege. These communications are not considered records to be maintained by the Title IX Office or accessible under this policy unless the Title IX Coordinator, in consultation with legal counsel as necessary, determines that these communications should be included as accessible records.

Record Storage:

Records may be created and maintained in different media formats; this policy applies to all records, irrespective of format. All records created pursuant to the Policy, as defined above, must be stored in [database, digital and/or paper] format. The complete file must be transferred to the Title IX Office within fourteen (14) business days of resolution of the complaint (including any appeal), if the file is not already maintained within the Title IX Office. Security protocols must be in place to preserve the integrity and privacy of any parts of any record that are maintained in the Title IX Office during the pendency of an investigation.

The Title IX Office will store all records created pursuant to the Policy, regardless of the identities of the parties. Parallel records [should/should not] be maintained in the Office of Student Conduct and/or Human Resources, respectively [and should be maintained in accordance with the security protocols of those offices]. Any extra (non-essential) copies of the records (both digital and paper) must be destroyed.

Recipient will maintain an access log of each case file, showing when and by whom it was accessed, and for what purpose.

Record Retention:

All records created and maintained pursuant to the Policy must be retained indefinitely by the Title IX Office [in database, digital, and/or paper form] unless destruction or expungement is authorized by the Title IX Coordinator, who may act under their own discretion in accordance with any state or local [public] record retention laws, a duly executed and binding settlement of claim, and/or by court or government order.

Record Access:

Access to records created pursuant to the Policy or housed in the Title IX Office is strictly limited to the Title IX Coordinator and any individual the Coordinator authorizes in writing, at their discretion [or via permission levels within the database] [or insert a list of the titles of employees who have permanently approved authorizations into policy or in a separately maintained document]. Those who are granted broad access to the records of the Title IX Office are expected to only access records pertinent to their scope or work or specific assignment. Anyone who accesses such records without proper authorization may be subject to an investigation and possible discipline/sanction. The discipline/sanction for unauthorized access of records covered by this policy will be at the discretion of the appropriate disciplinary authority, consistent with other relevant Recipient policies and procedures.

Student parties and/or their parent/guardian may request access to their case file. The Recipient will provide access or a copy within 45 days of the request. Appropriate redactions of personally identifiable information may be made before inspection or any copy is shared.

During the investigation, materials may be shared with the parties using secure file transmission software. Any such file will be watermarked by the Title IX Office before being shared, with the watermark identifying the role of the recipient in the process (Complainant, Respondent, Decision-maker, Complainant's Advisor, etc.).

Record Expungement:

Insert any applicable expungement provisions here.

Record Security:

The **Title IX Coordinator** is expected to maintain appropriate security practices for all records, including password protection, lock and key, and other barriers to access as appropriate. Record security should include protection from flood, fire, and other potential emergencies. Clothing, forensic, and other physical evidence should be securely stored **[in the Title IX Office, designated secure storage area, and/or with the campus law enforcement entity]**. All physical evidence will be maintained in a facility that is reasonably protected from flood and fire. A catalogue of all physical evidence will be retained with the case file.