

# Elmore County Schools' Title IX Grievance Procedure

Any student, parent/guardian, current or prospective employee or other individual within the school community who believes they have experienced and/or observed and/or is aware of sex discrimination or sexual harassment ("complainant") should promptly report the matter to Elmore County Schools' Title IX Coordinator, a school counselor, principal, or other school administrator.

A "formal complaint" is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment. A "nonformal or informal complaint" is any notification regardless of by mail, telephone, or email not utilizing the formal complaint form or not signed by a complainant or by the Title IX Coordinator.

## **Response to a Formal Complaint**

In response to a formal complaint, Elmore County Schools will follow the defined grievance process within this procedure. With or without a formal complaint, Elmore County Schools, if it has actual knowledge of sexual harassment against a person in an education program or activity, will take certain steps such as offering supportive measures to the complainant to address student safety and provide equal access to the education program or activity while preserving the recipient's discretion to address facts or circumstances present by a particular situation. Supportive measures may also be provided to respondent, as appropriate.

Complaints of alleged sex discrimination, including sexual harassment, brought forth by students, parents/guardians, current or prospective employees, and other members of the school community will be promptly investigated in an impartial and in as confidential a manner as reasonably possible so that corrective action can be taken if necessary.

The grievance procedures will be as follows:

1. It is the express policy of Elmore County Schools to encourage the prompt reporting of claims of sex discrimination and/or sexual harassment. Once the school has "actual knowledge" of sexual harassment or allegations of sexual harassment, the school will respond within 24 hours. "Actual knowledge" means notice or allegations received by Title IX Coordinator, school official with authority to institute corrective measures on behalf of Elmore County Schools, or any school employee. Elmore County Schools must treat a person as a complainant any time the school has notice that the person is alleged to be the victim of conduct that could constitute sexual harassment (regardless of whether the person themselves reported, or a third party reported the sexual harassment), and irrespective of whether the complainant ever chooses to file a formal complaint. Further, it should be noted, there is no time limit or statute of limitations on a complainant's decision to file a formal complaint.
2. At the time the formal complaint form is filed, the grievant shall promptly be given a copy of these grievance procedures and a description of the supportive measures offered by Elmore County Schools. A formal complaint form for such purpose can be found on our website and will also be provided to the grievant upon notification of such complaint. It is the responsibility of the Title IX Coordinator or designee to explain these procedures and measures and answer any questions anyone has. As it pertains to students, in appropriate circumstances, due to the age of the student making the complaint, a parent/guardian or school administrator may be permitted to fill out the form on the student's behalf.

In addition, if the grievant is a minor student, the Title IX Coordinator should consider whether a child abuse report should be completed in accordance with Elmore County Schools' policy on the Reports of Suspected Child Abuse or Neglect of Children.

3. The Title IX Coordinator or designee shall investigate the complaint as promptly as practicable but in no case more than ten (10) school days from the date the complaint was received. The Title IX Coordinator or designee shall have the complete cooperation of all persons during the investigation.

4. The Title IX Coordinator will provide written notice to the parties identified in the complaint. The written notice will include the allegations and facts that may constitute sexual harassment, the presumption that the accused did not engage in prohibited conduct, notice that parties are entitled to an advisor of their choice, notice that parties can request to inspect and review certain evidence, a copy of the code of conduct, false statements (if any), the opportunity to engage in informal resolution, the right to appeal, the range of possible remedies and disciplinary sanctions following determination of responsibility, and which standard of evidence will be used to reach a determination.

5. The Title IX Coordinator or designee shall meet with all individuals reasonably believed to have relevant information, including the grievant and the individual(s) against whom the complaint was lodged and any witnesses to the conduct. The investigation shall be carried out by the school discreetly, maintaining confidentiality insofar as reasonably possible while conducting an effective investigation. The investigator will objectively evaluate all relevant evidence regardless of who it favors or disfavors. Where facts are in conflict, credibility determinations can be made. However, credibility determinations will not be based on a person's status as a complainant, respondent, or witness. Following the evaluation, the investigator will prepare an investigative report and will share the report with all parties before a determination regarding responsibility is reached.

6. Prior to sharing the investigation report, the Title IX Coordinator must provide all parties a copy of the evidence used to form the basis of the report and allow all parties 10 calendar days to submit a written response. All written responses received will be objectively reviewed and considered by Elmore County Schools' investigator before issuing the report. Further, the Title IX Coordinator must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

7. Finally, Elmore County Schools' identified decision-maker, not the Title IX Coordinator or investigator, will make a determination and provide written determination of responsibility to both parties simultaneously. The written determination will include the following items:

Identification of the allegations potentially constituting sexual harassment as defined in §106.30; 2027

A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

Findings of fact supporting the determination;

Conclusions regarding the application of the recipient's code of conduct to the facts;

A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and

The recipient's procedures and permissible bases for the complainant and respondent to appeal.

8. If after an investigation, the decision-maker determines that there is reasonable cause to believe that sex discrimination or sexual harassment in violation of the school's policy has occurred, Elmore County Schools shall take appropriate corrective action to ensure that the conduct ceases and will not recur. The Title IX Coordinator or designee shall also provide and/or arrange for support services that are individualized, non-disciplinary, non-punitive, protect the safety of all parties and educational environment, deter harassment, and are not unreasonably burdensome. Such support services may include, no contact orders, academic accommodations, health and mental health services, disability services, confidential counseling, or training where appropriate.

highly and substantially more probable than not.

**Elmore County Schools will apply the following "standard of evidence"—Clear and convincing evidence.** The same standard of evidence for formal complaints will be applied for formal complaints against all parties, including but not limited to students, employees, and teachers.

#### **Disciplinary Sanctions and Remedies**

A range of different disciplinary sanctions or remedies may be implemented by the school following a determination of responsibility. Due to the unique nature of the situation and individual needs, the following is a non-exhaustive list of possible actions:

Support services may be warranted and may include, no contact orders, academic accommodations, health and mental health services, disability services, confidential counseling, or training where appropriate. Other potential measures may include:

Verbal or written correction

Virtual school

Altered schedules to eliminate interaction opportunities

Homebound

Exclusions from certain school activities

Class schedule modification

Access to recorded class sessions in lieu of live participation

Heightened supervision/escort

Suspension or expulsion

### **Appeal Process**

Either party, the complainant or the respondent, has the right to appeal for specified reasons. Appeals must be submitted within 30 school days following the date of the initial determination of responsibility. This equal right amongst the complainant and the respondent will promote a fair process that will benefit everyone and ensure parity between the parties. Thus, when a complainant or a respondent disagrees with a decision of responsibility, either party has the right to appeal on the limited basis of the following conditions:

(1) procedural irregularity that affected the outcome;

(2) new evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome; or

(3) the Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome.

Upon receipt of a written appeal request with evidence to support one or more of the above conditions, the Title IX Coordinator will:

- notify the parties in writing and implement appeal procedures equally,

- provide both parties the equal opportunity to submit a written statement of support or disagreement to the appeal,

- identify a new and impartial decision-maker to review the original and newly submitted evidence, and

After reviewing the new written statements, the new decision-maker will issue a decision to the parties simultaneously within 20 school days.

The determination regarding responsibility becomes final either on the date that the investigator provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Where deadlines are set forth in the grievance process, a temporary delay of the grievance process or the limited extension of timeframes for good cause are permitted with written notice by the Title IX Coordinator to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include, but are not limited to, considerations such as the absence of a party or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

### **Response to Informal Complaint**

The informal resolution process is a voluntary, structured interaction between involved parties (complainant and respondent) to resolve the allegations following the filing of a formal complaint and prior to a formal hearing on the allegations. The informal resolution process is intended to be flexible while also providing for a full range of possible outcomes.

The following are the parameters by which an informal resolution may be conducted.

The Title IX Coordinator may offer the parties the opportunity to become involved in an informal resolution process. Likewise, either party (complainant or respondent) may petition the Title IX Coordinator in writing to offer an informal resolution process to the other party. The Title IX Coordinator is the sole administrator who determines if an Informal Resolution (hereafter IR) is appropriate given the allegations.

The Title IX Coordinator and/or the coordinator's trained designee (here after facilitator) will supervise the informal resolution process. The facilitator will present the option of an Informal Resolution and proposed terms to each Party independently and in writing. All related communication will go through the facilitator. Participation in an Informal Resolution is voluntary for all Parties and requires full informed and written consent. If either Party does not agree with the proposed terms, or is uninterested in engaging in negotiations, the party may continue with the University's grievance process at any time before signing the Informal Resolution Agreement.

The IR will be voluntary for both parties and each party must submit a written request to become involved in the IR. An informal resolution cannot be offered if the complainant is a student and the respondent is an employee.

The IR will not require the parties to confront each other or even be present in the same room.

The parties may consult their advisor or have their advisor present at any time an IR meeting occurs.

Either party may withdraw, without penalty, from the IR up until a written resolution agreement is signed by both parties. If either party withdraws from the IR, the formal grievance process will resume.

A signed resolution agreement is binding on both parties.

The facilitator(s) has the authority to end the resolution process if the facilitator(s) believes that one or both parties are not operating in good faith. If this happens, the formal grievance process will resume.

Both parties and the facilitator (s) will have an opportunity to offer proposals to become a part of the final outcome(s)/agreement. An IR agreement may include, but is not limited to, an admission of responsibility, an admission of false allegations, disciplinary/punitive sanctions, counseling, and involvement in an educational program.

The Facilitator(s) and both parties must all agree to the outcome(s) of the IR. In doing so the facilitator will write a binding agreement based upon the parties' verbal agreement with the negotiated outcome(s). Separately, both parties will then be offered the opportunity to sign this IR agreement. If either party refuses to sign this agreement, the IR will be considered to have failed and the grievance process will resume.

### **Privacy Protections**

Elmore County Schools will never use or attempt to use questions or evidence that is protected by a legally recognized privilege, unless the person holding the privilege waives the privilege.

Elmore County Schools cannot unilaterally access or consider a party's records, if those records are made or maintained by a physician, psychiatrist, or other recognized professional and made for the purpose of providing treatment to the party. These records can only be accessed with a party's voluntary written consent.

During the grievance process, questions or evidence about the complainant's prior sexual behavior—even with the respondent accused of sexual harassment, and even in the cases where the respondent already possesses evidence about sexual history—are not generally deemed relevant, and may be allowed by only two narrow and limited exceptions.

### **Record Retention**

The Title IX Coordinator shall maintain all records of Title IX complaints and their disposition for a period of seven years.