

AGENDA

SCHOOL BOARD WORKSHOP

GADSDEN COUNTY SCHOOL BOARD  
MAX D. WALKER ADMINISTRATION BUILDING  
35 MARTIN LUTHER KING, JR. BLVD.  
QUINCY, FLORIDA

December 14, 2021

4:30 P.M.

1. Call To Order
2. Title IX Compliance Training - **Page #2**
3. Financial Information
4. Facilities Update
5. Educational Items by the Superintendent
6. School Board Requests and Concerns
7. Adjournment

# THE SCHOOL BOARD OF GADSDEN COUNTY




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Quincy, Florida 32351  
Main: (850) 627-9651 or Fax: (850) 627-2760  
<http://www.gadsschools.org/>

**Elijah Key**  
*Superintendent*  
keye@gcpsmail.com

## MEMORANDUM

**TO:** Leroy McMillan, Board Chairman  
Cathy S. Johnson, Board Member  
Steve Scott, Board Member  
Charlie D. Frost, Board Member  
Karema D. Dudley, Board Member

**FROM:** Ella-Mae P. Daniel, Director   
Professional Learning Services

**CC:** Elijah Key, Superintendent

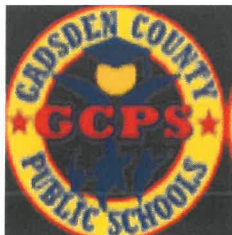
**DATE:** December 6, 2021

On Tuesday, December 14, 2021, the Board's Workshop will be hosted by the Office of Professional Learning Services and will involve training regarding the procedural requirements for complying with the Title IX rules that went into effect on August 14, 2020. The training will be conducted by Institutional Compliance Solutions (ICS). ICS is vetted by Florida Department of Education for providing technical assistance to school districts regarding Title IX compliance. You may learn more about ICS by accessing their site via this link: <https://icslawyer.com/>

Attached are the following documents for your perusal:

- Title IX Compliance Overview: Framed Structure for Title IX Compliance
- Title IX Frequent Questions/Answers
- Board Policy relating to Sexual Harassment/Discrimination (for quick reference)

Looking forward to seeing you on December 14 for the workshop. If you have any questions or need additional information prior to the workshop, please feel free to contact me at (850) 627-9651, Ext. 1401 or [petersen-daniele@gcpsmail.com](mailto:petersen-daniele@gcpsmail.com)



## OFFICE OF PROFESSIONAL LEARNING SERVICES Title IX Office Compliance Overview

### TITLE IX OFFICE PURPOSE

The Gadsden County Public School (GCPS) Title IX Office, coordinated by the Director, Professional Learning Services, was created to:

1. Address new compliance regulations established by the U. S Department of Education Office for Civil Rights, August 2021 in order to prohibit discrimination based on sex in education programs and operated GCPS.
2. Provide guidance on the GCPS Title IX policies and procedures in support to all GCPS students, parents and employees who have experienced discrimination based on sex.

### MISSION STATEMENT

The Gadsden County School Board takes seriously its obligations to ensure that no student or employee suffers discrimination on the basis of sex, as defined in Title IX of the Education Amendments Act of 1972. **Title IX is a Federal Law**, enacted in 1972 states: *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 education program or activity receiving Federal financial assistance.* The District is committed to supporting all members of its educational community by providing equitable services and resources including education, investigations, and care coordination in relation to sex-based discrimination, sexual harassment, and sexual and interpersonal misconduct.

### VISION STATEMENT

The GCPS Title IX Office envisions a culture that respects the dignity and work of every member of its community by ensuring that every student, employee, visitor, and vendor can work and learn in an environment free from discrimination, harassment, and retaliation.

### NEXT STEPS

- Title IX Compliance Workshop for School Board members -Workshop conducted by Institutional Compliance Solutions (ICS)

- Establish Title IX Committee (See required committee roles below)
  - Schedule Initial committee meeting
- Establish Training Plan (Initial committee credentialing training and responsible employee training)
- Establish budget for Title IX
- Revisit/Revise Board Policies and Procedures for new compliance requirements
  - Reporting Procedures
  - Appeal Procedures
  - Investigation Processes
  - Decision Making Processes
- Draft Title IX Plan (with revised recommended policies/procedures) for EMT/Board Review and Feedback
  - Submit Final Title IX Plan for Board Approval (Tentative, February 2022 Board Meeting)
- Establish a Title IX email (in process with IT)
- Provide cell phone for Title IX Coordinator
- Create Title IX Office District Website

**CONTACTS**

<b>Title IX Office regarding sexual harassment/discrimination</b>	<b>Contact Human Resources regarding non-discrimination policies</b>
Ella-Mae P. Daniel, Director, Professional Learning Services Title IX Coordinator <a href="mailto:petersen-daniele@gcpsmail.com">petersen-daniele@gcpsmail.com</a> or <a href="mailto:TitleIX@gcpsmail.com">TitleIX@gcpsmail.com</a>  Office: (850) 627-9651, Ext. 1401 Mobile: (To be established)	Dr. Sonya Jackson Director, Human Resources <a href="mailto:jacksonsonya@gcpsmail.com">jacksonsonya@gcpsmail.com</a>  Office: 850-627-9651, Ext. 1565
Title IX Committee (TBD)	

**REFERENCES**

Gadsden County School Board Policy (2019, 2020, 2021). *Prohibited discrimination, including sexual and other forms of harassment*. Chapter 2.00-School Board Governance and Organization, pp. 37-42. Retrieved from:  
[http://images.pcmac.org/Uploads/GadsdenCounty/GadsdenCounty/Departments/Forms/032321-%20Board%20Policies%20Updated\\_%7BSISE679E41DB014%7D.pdf](http://images.pcmac.org/Uploads/GadsdenCounty/GadsdenCounty/Departments/Forms/032321-%20Board%20Policies%20Updated_%7BSISE679E41DB014%7D.pdf)

Title IX Questions and Answers (January 2021). Retrieved from:  
<https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-20200904.pdf>

Title IX and Sex Discrimination (August 2021). Retrieved from:  
[https://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html)



September 4, 2020

## Questions and Answers Regarding the Department's Final Title IX Rule

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The Department of Education's Office for Civil Rights, through its new Outreach, Prevention, Education and Non-discrimination (OPEN) Center, issues the following technical assistance document to support institutions with meeting their obligations under the Title IX Rule, which was announced on May 6, 2020, and which became effective on August 14, 2020. Many of the questions were derived from questions posed to the OPEN center through e-mail.

OCR may periodically release additional Question and Answer documents addressing the Title IX Rule.

All references and citations are to the unofficial version of the Title IX Rule, which is available [here](#). A link to the official version of the Rule published in the Federal Register is [here](#).

Disclaimer: Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

### Effective Date of the Final Rule

**Question 1:** Can you please clarify whether the new Title IX rules that went into effect on August 14, 2020, will be applied retroactively?

**Answer 1:** The Title IX Rule will not be enforced retroactively. In the Preamble to the Rule at page 127, the Department states unambiguously that the Department will not enforce these final regulations retroactively. The Department also notes, in footnote 290 of the Rule, the general principle that:

Federal agencies authorized by statute to promulgate rules may only create rules with retroactive effect where the authorizing statute has expressly granted such authority. See 5 U.S.C. 551 (referring to a "rule" as agency action with "future effects" in the Administrative Procedure Act); *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) ("Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.").

[OCR-000121]

Consistent with the Department’s statements in the preamble to the Title IX Rule regarding non-retroactivity, the Rule does not apply to schools’ responses to sexual harassment that allegedly occurred prior to August 14, 2020. The Department will only enforce the Rule as to sexual harassment that allegedly occurred on or after August 14, 2020. With respect to sexual harassment that allegedly occurred prior to August 14, 2020, OCR will judge the school’s Title IX compliance against the Title IX statute and the Title IX regulations in place at the time that the alleged sexual harassment occurred. In other words, the Rule governs how schools must respond to sexual harassment that allegedly occurs on or after August 14, 2020.

### **Title IX Coordinator and Other Personnel Issues**

**Question 2:** Does the Title IX Rule specify whether each recipient must have a Title IX Coordinator, or is each school required to have a separate Title IX Coordinator, or both?

**Answer 2:** The Title IX Rule states in § 106.8(a): “Each *recipient* must designate and authorize *at least one employee* to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the “Title IX Coordinator.”” (emphasis added).

**Question 3:** The Title IX Rule allows schools to continue to address misconduct that does not meet the definition of sexual harassment. Can Title IX personnel still review these complaints, and follow procedures similar to those allegations that do meet the definition of sexual harassment?

**Answer 3:** Yes. The Title IX Rule does not preclude a recipient from using the same Title IX personnel (including the Title IX Coordinator, who must be an employee of the recipient, and Title IX investigators and decision-makers, who may be a recipient’s employees or the employees of a third-party, such as a consortium of schools) to review and investigate allegations of misconduct that fall outside the scope of Title IX. Similarly, the Rule does not preclude a recipient from using a grievance process that complies with § 106.45 with respect to allegations that fall outside the scope of Title IX. In the Preamble to the Rule at pages 481-82, for example, the Department states:

In response to commenters’ concerns, the final regulations revise § 106.45(b)(3)(i) to clearly state that dismissal for Title IX purposes does not preclude action under another provision of the recipient’s code of conduct. Thus, if a recipient is required under State law or the recipient’s own policies to investigate sexual or other misconduct that does not meet the § 106.30 definition, the final regulations clarify that a recipient may do so. Similarly, if a recipient wishes to use a grievance process that complies with § 106.45 to resolve allegations of misconduct that do not constitute sexual harassment under § 106.30, nothing in the final regulations precludes a recipient from doing so. Alternatively, a recipient may respond to non-Title IX misconduct under disciplinary procedures that do not comply with § 106.45. The final regulations leave recipients flexibility in this regard, and prescribe a particular grievance process only where allegations concern sexual harassment covered by Title IX.

## The Definition of Sexual Harassment

**Question 4:** One form of sexual harassment is conduct on the basis of sex that constitutes “[u]nwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.” In this sentence, does “reasonable person” modify only “severe, pervasive, and objectively offensive” only, or the effective denial clause as well? To clarify, can an “effective denial” be something that a reasonable person would experience, even if there is not evidence to show that the Complainant was in fact effectively denied?

**Answer 4:** The “reasonable person” standard in the second prong of the definition of sexual harassment under § 106.30(a) applies to each of the elements drawn from the U.S. Supreme Court’s decision in *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629 (1999). These elements include: severity, pervasiveness, objective offensiveness, and the effective denial of equal educational access. In the Preamble to the Rule, at page 515, the Department states: “The *Davis* standard ensures that all students, employees, and recipients understand that unwelcome conduct on the basis of sex is actionable under Title IX when a reasonable person in the complainant’s position would find the conduct severe, pervasive, and objectively offensive such that it effectively denies equal access to the recipient’s education program or activity.”

With respect to the denial of the equal access element in particular, in the Preamble to the Title IX Rule, at page 525, states:

Neither the Supreme Court, nor the final regulations in § 106.30, requires showing that a complainant dropped out of school, failed a class, had a panic attack, or otherwise reached a “breaking point” in order to report and receive a recipient’s supportive response to sexual harassment. The Department acknowledges that individuals react to sexual harassment in a wide variety of ways, and does not interpret the *Davis* standard to require certain manifestations of trauma or a “constructive expulsion.” Evaluating whether a reasonable person in the complainant’s position would deem the alleged harassment to deny a person “equal access” to education protects complainants against school officials inappropriately judging how a complainant has reacted to the sexual harassment. The § 106.30 definition neither requires nor permits school officials to impose notions of what a “perfect victim” does or says, nor may a recipient refuse to respond to sexual harassment because a complainant is “high-functioning” or not showing particular symptoms following a sexual harassment incident.

Similarly, the Preamble to the Title IX Rule, at pages 526-27, states:

With respect to the denial of equal access element, neither the *Davis* Court nor the Department’s final regulations require complete exclusion from an education, but rather denial of “equal” access. Signs of enduring *unequal* educational access due to severe, pervasive, and objectively offensive sexual harassment may include, as commenters suggest, skipping class to avoid a harasser, a decline in a student’s

grade point average, or having difficulty concentrating in class; however, *no concrete injury is required to conclude that serious harassment would deprive a reasonable person* in the complainant's position of the ability to access the recipient's education program or activity on an equal basis with persons who are not suffering such harassment.

(emphasis added).

### Filing of a Formal Complaint

**Question 5:** The Title IX Rule states: "At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed." If a complainant either withdraws from school because of sexual harassment and then files a complaint, or files a complaint but then withdraws as a result of the sexual harassment or stress of the grievance process, how would the regulations affect the complainant's ability to pursue a formal complaint?

**Answer 5:** Under the Title IX Rule, recipients must promptly respond to a report that an individual has been allegedly victimized by sexual harassment, whether the alleged victim is presently a student or not, in a manner that is not "deliberately indifferent," or clearly unreasonable in light of known circumstances. Students and others who are participating or attempting to participate in the school's program or activity also have the right to file a formal complaint.

In the Preamble to the Title IX Rule, at pages 411-12, the Department further explains:

A complainant who has graduated may still be 'attempting to participate' in the recipient's education program or activity; for example, where the complainant has graduated from one program but intends to apply to a different program, or where the graduated complainant intends to remain involved with a recipient's alumni programs and activities. Similarly, a complainant who is on a leave of absence may be 'participating or attempting to participate' in the recipient's education program or activity; for example, such a complainant may still be enrolled as a student even while on leave of absence, or may intend to re-apply after a leave of absence and thus is still 'attempting to participate' even while on a leave of absence. *By way of further example, a complainant who has left school because of sexual harassment, but expresses a desire to re-enroll if the recipient appropriately responds to the sexual harassment, is 'attempting to participate' in the recipient's education program or activity.*

(emphasis added). Additionally, the Rule permits Title IX Coordinators to sign a formal complaint, regardless of whether a complainant is "participating or attempting to participate" in the school's education program or activity. A Title IX Coordinator's decision to sign a formal complaint (or not) is evaluated under the deliberate indifference standard: whether the decision was clearly unreasonable in light of the known circumstances.



## Conducting an Investigation Hearing

**Question 6:** May a recipient delegate many of the functions required by the Title IX Rule to an outside entity, such as a Regional Center or consortium of schools?

**Answer 6:** Yes. In particular, many of the elements of the investigation and hearing processes lend themselves to delegation. The recipient itself remains ultimately responsible for ensuring compliance with the legal obligations under the Title IX Rule.

At page 273 of the Preamble to the Title IX Rule, the Department expressly contemplates and encourages recipients to consider innovative approaches such as consortiums and regional centers:

The Department appreciates commenters' recommendations for using regional center models and similar models involving voluntary, cooperative efforts among recipients to outsource the investigation and adjudication functions required under the final regulations. The Department believes these models represent the potential for innovation with respect to how recipients might best fulfill the obligation to impartially reach accurate factual determinations while treating both parties fairly. The Department encourages recipients to consider innovative solutions to the challenges presented by the legal obligation for recipients to fairly and impartially investigate and adjudicate these difficult cases, and the Department will provide technical assistance for recipients with questions about pursuing regional center models.

To be sure, there are limitations on the extent to which a recipient may delegate certain responsibilities to other entities. For instance, each recipient must itself employ a Title IX Coordinator. *See* § 106.8 (“Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the “Title IX Coordinator.”). Similarly, each recipient is responsible for ensuring that its grievance procedures satisfy the Title IX Rule. *See* § 106.8(c) (“A recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30”). Still, despite these limitations, the Title IX Rule offers ample opportunity for recipients to find efficiencies in cooperation with other recipients, particularly with respect to investigation and adjudication.

**Question 7:** What are the rules of evidence at a hearing? Do courtroom rules like the Federal Rules of Evidence apply to a hearing under Title IX?

**Answer 7:** The Title IX Rule does not adopt the Federal Rules of Evidence for hearings conducted under Title IX. For instance, with respect to which evidence may be introduced, the Rule uses “relevance” as the sole admissibility criterion. *See* § 106.45(b)(1)(ii) (the recipient’s grievance process must provide for objective evaluation of all relevant evidence, including evidence that is inculpatory and exculpatory).

The Title IX Rule also deems certain evidence and information to be not relevant or otherwise precludes the recipient from using it: (i) a party’s treatment records, without the party’s prior

written consent [§ 106.45(b)(5)(i)]; (ii) information protected by a legally recognized privilege [§ 106.45(b)(1)(x)]; (iii) questions or evidence about a complainant’s sexual predisposition, and questions or evidence about a complainant’s prior sexual behavior unless it meets one of two limited exceptions [§ 106.45(b)(6)(i)-(ii)]; and, for postsecondary institutions, the decision-maker cannot rely on the statements of a party or witness who does not submit to cross-examination [§ 106.45(b)(6)(i)].

In the Preamble to the Title IX Rule, at pages 980-82, the Department explains:

These final regulations require objective evaluation of relevant evidence, and contain several provisions specifying types of evidence deemed irrelevant or excluded from consideration in a grievance process; a recipient may not adopt evidentiary rules of admissibility that contravene those evidentiary requirements prescribed under § 106.45. For example, a recipient may not adopt a rule excluding relevant evidence whose probative value is substantially outweighed by the danger of unfair prejudice; although such a rule is part of the Federal Rules of Evidence, the Federal Rules of Evidence constitute a complex, comprehensive set of evidentiary rules and exceptions designed to be applied by judges and lawyers, while *Title IX grievance processes are not court trials and are expected to be overseen by layperson officials of a school, college, or university rather than by a judge or lawyer*. Similarly, a recipient may not adopt rules excluding certain types of relevant evidence (e.g., lie detector test results, or rape kits) where the type of evidence is not either deemed “not relevant” (as is, for instance, evidence concerning a complainant’s prior sexual history ) or otherwise barred from use under § 106.45 (as is, for instance, information protected by a legally recognized privilege). However, the § 106.45 grievance process does not prescribe rules governing how admissible, relevant evidence must be evaluated for weight or credibility by a recipient’s decision-maker, and recipients thus have discretion to adopt and apply rules in that regard, so long as such rules do not conflict with § 106.45 and apply equally to both parties.

**Question 8:** Do recipients have latitude to define relevance on their own?

**Answer 8:** In the Preamble to the Title IX Rule, at page 811, footnote 1018, the Department states: “The final regulations do not define relevance, and the ordinary meaning of the word should be understood and applied.” At page 812 of the Preamble, the Department states:

Relevance is the standard that these final regulations require, and any evidentiary rules that a recipient chooses must respect this standard of relevance. For example, a recipient may not adopt a rule excluding relevant evidence because such relevant evidence may be unduly prejudicial, concern prior bad acts, or constitute character evidence. A recipient may adopt rules of order or decorum to forbid badgering a witness, and may fairly deem repetition of the same question to be irrelevant.

However, there is a difference between the admission of relevant evidence, and the weight, credibility, or persuasiveness of particular evidence. At pages 981-82 of the Preamble, the Department further explains:

However, the § 106.45 grievance process does not prescribe rules governing how admissible, relevant evidence must be evaluated for weight or credibility by a recipient's decision-maker, and recipients thus have discretion to adopt and apply rules in that regard, so long as such rules do not conflict with § 106.45 and apply equally to both parties. In response to commenters' concerns that the final regulations do not specify rules about evaluation of evidence, and recognizing that recipients therefore have discretion to adopt rules not otherwise prohibited under § 106.45, the final regulations acknowledge this reality by adding language to the introductory sentence of § 106.45(b): "Any provisions, rules, or practices other than those required by § 106.45 that a recipient adopts as part of its grievance process for handling formal complaints of sexual harassment, as defined in § 106.30, must apply equally to both parties." A recipient may, for example, adopt a rule regarding the weight or credibility (but not the admissibility) that a decision-maker should assign to evidence of a party's prior bad acts, so long as such a rule applied equally to the prior bad acts of complainants and the prior bad acts of respondents. Because a recipient's investigators and decision-makers must be trained specifically with respect to "issues of relevance," any rules adopted by a recipient in this regard should be reflected in the recipient's training materials, which must be publicly available.

(emphasis added) (internal footnotes omitted).

**Question 9:** The Title IX Rule states that at the postsecondary level, if a party does not appear at a live hearing, or chooses to not answer cross examination questions, that party's statement must not be relied upon "in reaching a determination regarding responsibility." If a complainant opts not to answer cross-examination questions, how does that impact that complainant's statements in an investigative report? Does it mean all statements provided by that party before the hearing—including statements made to an investigator and summarized in the investigation report—are excluded?

**Answer 9:** The Title IX Rule, at § 106.45(b)(6)(i), requires postsecondary institutions to hold a live hearing with the opportunity for each party's advisor to conduct cross-examination of parties and witnesses.

At page 1179 of the Preamble to the Rule, the Department explains:

Because party and witness statements so often raise credibility questions in the context of sexual harassment allegations, *the decision-maker must consider only those statements that have benefited from the truth-seeking function of cross-examination.* The recipient, and the parties, have equal opportunity (and, for the recipient, the obligation) to gather and present relevant evidence including fact and expert witnesses, and face the same limitations inherent in a lack of subpoena power

to compel witness testimony. The Department believes that the final regulations, including § 106.45(b)(6)(i), strike the appropriate balance for a postsecondary institution context between ensuring that only relevant and reliable evidence is considered while not over-legalizing the grievance process.

(emphasis added). And at page 1181 of the Preamble to the Title IX Rule, the Department states:

The prohibition on reliance on “statements” applies not only to statements made during the hearing, *but also to any statement of the party or witness who does not submit to cross-examination.* “Statements” has its ordinary meaning, but would not include evidence (such as videos) that do not constitute a person’s intent to make factual assertions, or to the extent that such evidence does not contain a person’s statements. Thus, *police reports, SANE reports, medical reports, and other documents and records may not be relied on to the extent that they contain the statements of a party or witness who has not submitted to cross-examination.* While documentary evidence such as police reports or hospital records may have been gathered during investigation and, if directly related to the allegations inspected and reviewed by the parties, and to the extent they are relevant, summarized in the investigative report, the hearing is the parties’ first opportunity to argue to the decision-maker about the credibility and implications of such evidence. Probing the credibility and reliability of *statements* asserted by witnesses contained in such evidence requires the parties to have the opportunity to cross-examine the witnesses making the statements.

(emphasis added) (footnotes omitted). For a further discussion of this topic and how it relates to unprotected speech that itself constitutes sexual harassment under the Title IX Rule, readers are invited to review OCR’s blog post on this topic [here](#).

**Question 10:** When a post-secondary institution holds a live hearing, is the questioning limited to certain subjects?

**Answer 10:** The Rule requires that schools provide the opportunity for cross-examination, and that party advisors must be permitted to ask *all* relevant questions (including follow-up questions), and *only* relevant questions.

**Question 11:** At the postsecondary level, are party advisors expected to cross-examine witnesses?

**Answer 11:** The Title IX Rule, at § 106.45(b)(6)(i), states that a postsecondary institution must hold a live hearing. At the hearing, each party’s advisor of choice must be “permitted” to cross-examine witnesses. (Note that the same provision requires the recipient to provide a party with an advisor of the recipient’s choice, if the party appears at the hearing without an advisor of the party’s choice.)

**Question 12:** If a party’s advisor fails to cross-examine another party on a key statement related to credibility, what is the effect of this on the statement made by the complainant? May the decision-maker consider the key statement?

**Answer 12:** The Title IX Rule, in § 106.45(b)(6)(i), states: “At the live hearing, the decision-maker(s) must permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.”

In the Preamble to the Rule at page 1181, the Department states (emphasis added):

Probing the credibility and reliability of statements asserted by witnesses contained in such evidence requires the parties to have *the opportunity* to cross-examine the witnesses making the statements.

The Department appreciates the opportunity to clarify here that to “submit to cross-examination” means answering those cross-examination questions that are relevant; the decision-maker is required to make relevance determinations regarding cross-examination in real time during the hearing in part to ensure that parties and witnesses do not feel compelled to answer irrelevant questions for fear of their statements being excluded.

(emphasis added).

Thus, the decision-maker is obligated to “permit” each party’s advisor to ask all relevant questions. However, this provision provides only an “opportunity” for each party (through an advisor) to conduct cross-examination; this provision does not purport to require that each party conduct cross-examination or will conduct cross-examination to the fullest extent possible. If a party chooses not to conduct cross-examination of another party or witness, that other party or witness cannot “submit” or “not submit” to cross-examination. Accordingly, the decision-maker is not precluded from relying on any statement of the party or witness who was not given the opportunity to submit to cross-examination. The same is true if a party’s advisor asks some cross-examination questions but not every possible cross-examination question; as to cross-examination questions *not asked* of a party or witness, that party or witness cannot be said to have submitted or not submitted to cross-examination, so the decision-maker is not precluded from relying on that party’s or witness’s statements.

Conversely, if a party or witness answers one, or some, but not all, relevant cross-examination questions asked by a party’s advisor at the live hearing, then that party or witness has not submitted to cross-examination and that party’s or witness’s statements cannot be relied on by the decision-maker. *See* Preamble at page 1183 (“the Department declines to allow a party or witness to “waive” a question because such a rule would circumvent the benefits and purposes of cross-examination as a truth-seeking tool for postsecondary institutions’ Title IX adjudications”).

**Question 13:** Does an advisor or party have an opportunity to provide input about how evidence should be weighted by the decision-maker?

**Answer 13:** Yes. The parties must have an equal opportunity to inspect, review, and respond to evidence directly related to the allegations (see § 106.45(b)(5)(vi)), and an equal opportunity to review and respond to the recipient’s investigative report (see § 106.45(b)(5)(vii)), allows each party the opportunity to provide input and make arguments about the relevance of evidence and

how a decision-maker should weigh the evidence. In the Preamble to the Rule at p. 1015, the Department states that the Rule:

. . . balances the recipient’s obligation to impartially gather and objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence, with the parties’ equal right to participate in furthering each party’s own interests by identifying evidence overlooked by the investigator and evidence the investigator erroneously deemed relevant or irrelevant and making arguments to the decision-maker regarding the relevance of evidence and the weight or credibility of relevant evidence.

Note that Sections 106.45(b)(5)(vi) and (vii) require the recipient to “send to each party and the party’s advisor, if any” the evidence and the investigative report, so that a party’s advisor can advise the party in exercising the party’s right to review and respond to the evidence and to the investigative report.

**Question 14:** Are all witnesses expected to appear at a hearing, or do decision-makers have the flexibility to request witnesses as they deem necessary?

**Answer 14:** The Title IX Rule does not require that all witnesses appear at a hearing, although it does provide the parties an equal right to present witnesses. At page 1176 of the Preamble of the Title IX Rule, the Department acknowledges that recipients do not have subpoena powers to compel attendance of parties or witnesses at a hearing:

The Department understands that complainants (and respondents) often will not have control over whether witnesses appear and are cross-examined, because neither the recipient nor the parties have subpoena power to compel appearance of witnesses. Some absences of witnesses can be avoided by a recipient thoughtfully working with witnesses regarding scheduling of a hearing, and taking advantage of the discretion to permit witnesses to testify remotely.

Furthermore, § 106.71(a) protects parties and witnesses against retaliation for deciding to participate or not to participate in a Title IX grievance process. Thus, a witness cannot be compelled to appear at a hearing, and cannot be intimidated, threatened, coerced, or discriminated against if the witness chooses not to appear. However, the parties must have an equal opportunity to “present” witnesses, so the decision-maker cannot request the presence only of witnesses the decision-maker has deemed necessary. The decision-maker has discretion to permit witnesses to testify at the hearing remotely, using technology. *See* § 106.45(b)(6)(i).

**Question 15:** Some recipients divide hearings between a “responsibility” phase and a “sanctions” phase. Is that bifurcation possible under Title IX?

**Answer 15:** Yes. The Rule does not preclude a recipient from using one decision-maker to reach the determination regarding responsibility, and having another decision-maker determine appropriate remedies or a complainant or appropriate disciplinary sanctions for the respondent. However, the end result must be that the written determination regarding responsibility includes

the remedies and disciplinary sanctions decided upon in the written determination issued under § 106.45(b)(7).

That provision, at § 106.45(b)(7), requires a recipient's decision-maker(s) to issue a written determination that must include, among other items, the result as to each allegation and rationale for the result, any disciplinary sanctions imposed by the recipient against the respondent, and whether remedies will be provided by the recipient to the complainant. The issuance of a written determination cannot be a piecemeal process that is broken down into chronologically occurring sub-parts.

Recipients should also remain aware of their obligation to conclude the grievance process within the reasonably prompt time frames designated in the recipient's grievance process, under § 106.45(b)(1)(v). Additionally, each decision-maker—whether an employee of the recipient or an employee of a third party such as a consortium of schools—owes an individual and ongoing duty not have a conflict of interest or bias for or against complainants or respondents generally, or with respect to an individual complainant or respondent, pursuant to § 106.45(b)(1)(iii).

If you have questions for the Office for Civil Rights (OCR), want additional information or technical assistance, or believe that a school is violating federal civil rights law, visit OCR's website at [www.ed.gov/ocr](http://www.ed.gov/ocr), or the Department's Title IX page at [www.ed.gov/titleix](http://www.ed.gov/titleix). You may contact OCR at (800) 421-3481 (TDD: 800-877-8339), [ocr@ed.gov](mailto:ocr@ed.gov), or contact OCR's Outreach, Prevention, Education and Non-discrimination (OPEN) Center at [OPEN@ed.gov](mailto:OPEN@ed.gov), or e-mail the OPEN Center with additional questions about the Title IX Final Rule at [T9questions@ed.gov](mailto:T9questions@ed.gov). Additional information regarding the Title IX Final Rule is available [here](#). You may also fill out a complaint form online at <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

**CHAPTER 2.00 - SCHOOL BOARD GOVERNANCE AND ORGANIZATION**

**PROHIBITED DISCRIMINATION, INCLUDING SEXUAL  
AND OTHER FORMS OF HARASSMENT**

**2.70\*+**

**I. Policy Against Discrimination**

- A. The School Board of Gadsden County, Florida prohibits all forms of unlawful discrimination against students, employees and other persons in all aspects of the District's programs, activities and operations. The term "unlawful discrimination" encompasses any unlawful policy, practice, conduct, or other unlawful denial of rights, benefits, or privileges that is based on any legally protected status or classification under applicable federal, state, or local law including but not limited to race (including anti-semitism), color, religion, gender, age, marital status, sexual orientation, pregnancy, disability, political or religious beliefs, national or ethnic origin, or genetic information. Various state and federal laws establish the actions that do (and do not) constitute unlawful discrimination with respect to each protected status or classification. Where applicable, unlawful harassment that is based on a legally-protected status is one form of unlawful discrimination.
- B. The School Board shall comply with all state and federal laws, which prohibit discrimination and are designed to protect the civil rights of applicants, employees, and/or students, or other persons or organizations protected by applicable law.
- C. The School Board shall admit students to District Schools, programs, and classes without regard to race (Including anti-semitism), color, religion, gender, age, national or ethnic origin, marital status, sexual orientation, political or religious beliefs, disability, handicap or any other distinguishing physical or personality characteristics.
- D. The School Board prohibits retaliation by any District personnel against a person for reporting, filing or being a witness in a discrimination (including harassment) charge, complaint, investigation or lawsuit associate or in connection with this policy.
- E. Established grievance procedures and appropriate discrimination complaint forms are available from the Office of Civil Rights & Equity (Professional Standards), Student Support Services or the Equity Coordinator at each school/district office. Complaints/inquiries regarding compliance with these regulations may be submitted in writing to:
  - 1. For Employee - Office of Civil Rights and Equity Compliance at The Gadsden County School Board, 35 Martin L. King Jr., Blvd, Quincy, FL 32351.



2. For Students – Student Support Services at The Gadsden County School Board, 35 Martin L. King Jr., Blvd, Quincy, FL 32351.
  3. Job applicants with disabilities requesting accommodations under the American with Disabilities Act (ADA) may contact Human Resources at (Contact information\*)
  4. Current School District employees with disabilities requesting accommodations under the ADA may contact Professional Standards at (Contact Information)
- F. The Superintendent shall submit an annual equity report addressing the district’s educational and employment practices as required by Florida’s Educational equity Act.
- II. Policy Against Sexual Harassment or Other Forms of Harassment Prohibited by Law
- A. The School Board desires to maintain an academic and work environment in which all employees, volunteers, and students are treated with respect and dignity. A vital element of this atmosphere is the Board’s commitment to equal opportunities and the prohibition of discriminatory practices. The Board’s prohibition against discriminatory practices includes prohibitions against sexual harassment, or any other form of harassment based upon a person’s membership in a protected class and specifically prohibited by applicable state or federal law. The School Board forbids sexual harassment, or any other form of illegal harassment, of any employee, student, volunteer or visitor. The Board will not tolerate sexual harassment, or any other form of illegal harassment by any of its employees, students, volunteers or agents.
  - B. The prohibition against discrimination including sexual and other forms of illegal harassment shall also apply to nonemployee volunteers who work subject to the control of school authorities, and to all vendors or service providers who have access to School Board facilities.
- III. Definitions
- A. Compliance Officer is the person designated by the School Board to receive complaints of harassment referred by the Title IX Coordinator and oversees the investigation of those complaints as described below.
  - B. Sexual harassment prohibited by Title IX means conduct on the basis of sex that satisfies one or more of the following:
    1. An employee of the School Board conditioning the provision of an aid, benefit, or service of the School Board on an individual’s participation in unwelcome sexual conduct (quid pro quo)
    2. Any unwanted or unwelcome conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal educational access.
    3. Reports of sexual assault, dating violence, domestic violence and stalking, as defined in the federal Violence Against Women Act do not need to meet the description of severe, pervasive and objectively offensive.

- C. Prohibited sexual harassment includes, but is not limited to, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature when
  - 1. Submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress.
  - 2. Submission to or rejection of the conduct by an individual is used as the basis for employment or academic decisions affecting the individual.
  - 3. The conduct has the purpose or effect of having a negative impact on the individual's academic performance or employment, unreasonably interfering with the individual's education or employment, or creating an intimidating, hostile, or offensive educational or employment environment.
  - 4. Submission to or rejection of the conduct by the individual is used as the basis for any decision affecting the individual regarding any term or condition of employment, employment or academic benefits, or services, honors, programs, or activities available at or through the school.
- D. Types of conduct which are prohibited in the District and which may constitute sexual harassment include, but are not limited to
  - 1. Graphic verbal comments about an individual's body or appearance.
  - 2. Sexual jokes, notes, stories, drawings, pictures or gestures.
  - 3. Sexual slurs, leering, threats, abusive words, derogatory comments or sexually degrading descriptions.
  - 4. Unwelcome sexual flirtations or propositions for sexual activity or unwelcome demands for sexual favors, including but not limited to repeated unwelcome requests for dates.
  - 5. Spreading sexual rumors.
  - 6. Touching an individual's body or clothes (including one's own) in a sexual way, including, but not limited to, grabbing, brushing against, patting, pinching, bumping, rubbing, kissing, and fondling.
  - 7. Cornering or blocking normal movements.
  - 8. Displaying sexually suggestive drawings, pictures, written materials, and objects in the educational environment.

IV. Definition of Other Forms of Prohibited Harassment

- A. Illegal harassment on the basis of any other characteristic protected by state or federal law is strictly prohibited. This includes verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race (including ant-semitism), color, religion, gender, national or ethnic origin, age, disability, marital status, sexual orientation, political or religious beliefs, citizenship, pregnancy or genetic information or any other distinguishing physical or personality characteristic protected by law and that
  - 1. Has the purpose or effect of creating an intimidating, hostile or offensive work or academic environment;
  - 2. Has the purpose or effect of interfering with an individual's work or academic performance; or

3. Otherwise, adversely affects an individual's employment or academic performance.
- B. Examples of prohibited actions, which may constitute harassment include, but are not limited to, the following:
1. Epithets, slurs or negative stereotyping; or
  2. Threatening, intimidating or hostile acts, such as physical acts of aggression against a person or his property; or
  3. Written or graphic material that denigrates or shows hostility or aversion toward an individual or group and that is placed on walls or elsewhere on the school or District office premises or circulated in the workplace or academic environment.
- V. Procedures for Filing Complaint of Discrimination, Sexual Harassment, or Other Form of Illegal Harassment
- C. Procedures for Filing Complaints
1. Any person who believes that he or she has been discriminated against, or placed in a hostile environment based on gender, marital status, sexual orientation, race, color, national or ethnic origin, religion, age, disability, political or religious beliefs, pregnancy or any other distinguishing physical or personality characteristics by an employee, volunteer, agent or student of the School District should report the alleged harassment to the Title IX Coordinator or to any school personnel. The alleged harassment should be reported within sixty (60) days of alleged occurrence. The complaint should set forth a description of the alleged discriminatory actions/harassment, the time frame in which the alleged discrimination occurred, the person or persons involved in the alleged discriminatory actions, and any witnesses or other evidence relevant to the allegations in the complaint. Any school personnel who has notice that a student or other school personnel may have been a victim of prohibited harassment shall immediately report the alleged harassment to the Title IX Coordinator. The formal complaint must be resolved according to the federal regulations and District processes that specifically apply to such formal complaints; and
  2. After receiving a complaint, the Title IX Coordinator makes an initial determination whether the allegations may be sexual harassment prohibited by Title IX. If they may be, the Title IX Grievance Process listed below is followed. If it does not meet the sexual harassment prohibited by Title IX, then the complaint is referred to the Compliance Officer who follows the procedures set forth below. The Title IX Coordinator will also determine whether the alleged harassment may also constitute criminal conduct and ensure that law enforcement officials are notified, if necessary. If the alleged harassment may also constitute child abuse, then it must be reported to the Department of Children and Families.

3. The complaint should be filed with the School Principal, Site Administrator or Supervisor. Complaints filed with the Principal, Site Administrator, or Supervisor must be forwarded to the District's EEO Officer (\*Equity or Professional Standards Coordinator) within five (5) days of the filing of the complaint. If the complaint is against the principal, site administrator, or supervisor, the complaint may be filed directly with the EEO (\*Equity or Professional Standards coordinator) officer.
4. If the complaint is against the District's EEO Officer, the Superintendent, or other member of the School Board, the complaint may be filed with the School Board Attorney.

D. Procedures for Processing Complaints of Harassment

1. Complaints filed against persons other than the Equity Officer (Professional Standards Coordinator), Superintendent or member of the School Board.
  - a. Upon receipt of the written complaint by the District EEO/Equity Officer (Professional Standards Coordinator) Officer, the District EEO Officer shall appoint an investigator to conduct an investigation of the allegations in the complaint. The investigation may be conducted by school personnel or a third party designated by the school district. The investigation will be conducted within thirty (30) days. The investigator shall determine whether interim measures should be taken pending the outcome of the investigation. Such interim measures may include, but are not limited to, separating the alleged harasser and the person allegedly harassed. The investigator shall interview the complainant and the accused; interview any witnesses identified by the complainant, accused, or by other sources; take statements from all witnesses; and review any relevant documents or other evidence. Upon completing a review of all evidence relevant to the complaint, the investigator shall prepare a written summary of the investigation, and make a recommendation to the District EEO/Equity Officer (Professional Standards Coordinator) Officer as to whether there is reasonable cause to believe a violation of the District's antidiscrimination policy has occurred. Copies of documents, evidence and witness statements which were considered in the investigation must be sent to the EEO officer along with the summary and recommendation.
  - b. If the complaint is against the EEO officer, the School Board Attorney shall appoint an investigator, who shall conduct an investigation in the manner set forth in section V.B.1.a.
  - c. The investigation, summary, relevant documents, witnesses' statements and recommendation should be completed and forwarded to the EEO Officer within thirty (30) days, or to the

School Board Attorney within thirty (30) days, if the complaint is against the EEO Officer. The EEO Officer, or School Board Attorney, respectively, shall review the investigation summary, evidence and recommendation, and determine within ten (10) days whether there is reasonable cause to believe a discriminatory practice occurred.

- d. If the EEO Officer or School Board Attorney determines there is reasonable cause to believe a violation of the nondiscriminatory policy occurred, he or she shall within ten (10) days provide notice of the reasonable cause finding to the complainant and the accused. The EEO Officer or School Board Attorney shall then forward the investigatory file, reasonable cause determination, and all related documents and evidence, to the Superintendent.
- e. If the EEO Officer or School Board Attorney determines, after a review of the investigation, summary, recommendation and other evidence, that there is no reasonable cause to believe a discriminatory practice occurred, he or she shall provide within ten (10) days notice of the finding of no reasonable cause to the complainant and accused. The complainant may request a no reasonable cause finding by the EEO Officer or School Board Attorney be reviewed by the Superintendent within ten (10) days of receipt of this notice. The complainant shall provide a written statement detailing facts in support of his or her disagreement with the determination.
- f. The complainant will also be given an opportunity to meet with the Superintendent and EEO Officer/School Board Attorney to present his or her position. The Superintendent and EEO Officer/School Board Attorney shall prepare a written memorandum summarizing the content of the conference to be included in the complaint file. The Superintendent shall within ten (10) days of receipt of the notice make a final determination as to whether there is reasonable cause to believe a discriminatory practice occurred.
- g. If review by the Superintendent is not timely requested, the EEO Officer or School Board Attorney's determination of no reasonable cause shall be final.
- h. The accused may request, within ten (10) days of receipt of a notice of a finding of reasonable cause, that the determination be reviewed by the Superintendent. The request must include a written statement expressing the accused's position on the complaint and findings, and address any facts, statements or evidence which he or she submits are inaccurate. The accused will be given an opportunity to meet with the Superintendent and the EEO Officer/School Board

Attorney to present his or her position. The Superintendent and EEO Officer/School Board Attorney must within ten (10) days of receipt of the notice prepare a memorandum summarizing the content of the meeting to be included in the complaint file.

- i. If review by the Superintendent is not timely requested, the EEO Officer or School Board Attorney's determination of no reasonable cause shall be final.
  - j. After providing the opportunity for an informal hearing as referenced in section V.B.1.h., the Superintendent shall evaluate all the evidence, the investigation summary, recommendations and findings, along with any input by the accused and complainant, and make a final determination as to whether there is reasonable cause to support the complainant's allegations. He or she shall then determine any necessary disciplinary, remedial, or other action. Notice of the final disposition of the complaint and any disciplinary and/or remedial action shall within ten (10) days of the informal hearing be forwarded to the accused and the complainant, and a copy of the notice will be filed with and maintained in the office of the District EEO Officer and the Personnel Director.
  - k. All employees shall cooperate with any investigation of alleged harassment conducted under this policy or by an appropriate state or federal agency.
  - l. Employees may choose to pursue their complaints through the relevant employee grievance procedure instead of the complaint procedure in this policy.
2. Complaints against School Board Members or against the Superintendent
    - a. Complaints against School Board Members or the Superintendent shall be filed with the School Board Attorney. The School Board Attorney will within twenty (20) days appoint an outside, independent investigator to conduct an investigation and make a recommendation as to whether a discriminatory practice has occurred. It is recommended, but not mandatory, that the investigator be an attorney familiar with federal and state law prohibiting discrimination on the basis of a protected status.
    - b. The complainant and accused shall be interviewed by the outside investigator. Both shall provide written lists of witnesses to be interviewed, and documents or other evidence to be reviewed as relevant to the complaint. The investigator shall interview all witnesses identified by the complainant or accused, in addition to witnesses with relevant knowledge which the investigator may discover from other sources. The investigator shall also review relevant documents and other evidence. The investigator shall

within twenty (20) days of receiving the complaint prepare a written summary of his or her investigation, and a recommendation to the School Board Attorney as to whether there is reasonable cause to believe that a discriminatory practice may have occurred.

- c. If reasonable cause is recommended by the investigator against a School Board Member or an elected Superintendent, the recommendation shall within twenty (20) days be forwarded to the Governor's office to determine if there is evidence that a misfeasance or malfeasance of office occurred. The Governor's office will be responsible for taking any necessary action in accordance with applicable law with reference to an elected official. The School Board shall receive and make the final determination if the Superintendent is appointed by the Board.
- d. A finding of no reasonable cause by the outside investigator, which is reviewed and confirmed by the School Board Attorney shall be final. In compliance with Florida Statute, the investigation file shall become public record and the Superintendent or School Board Member shall answer to their constituency.

E. Penalties for Confirmed Discrimination or Harassment

- 1. Student - A substantiated allegation of discrimination or harassment against a student shall subject that student to disciplinary action consistent with the *Code of Student Conduct*.
- 2. Employee or Volunteer - A substantiated allegation of discrimination or harassment against an employee may result in disciplinary actions including termination and referral to appropriate law enforcement authorities. A volunteer shall be removed from service and a referral may be made to appropriate law enforcement authorities.

F. Limited Exemption from Public Records Act and Notification of Parents of Minors

- 1. To the extent possible, complaints will be treated as confidential and in accordance with Florida Statutes and the Family Educational Rights and Privacy Act (FERPA). Limited disclosure may be necessary to complete a thorough investigation as described above. The District's obligation to investigation and take corrective action may supersede an individual's right to privacy.
- 2. The parents of a person under the age of 18 who has filed a complaint of discrimination and/or harassment shall be notified within three (3) days of receipt of a complaint.

V. Sexual Harassment Prohibited by Title IX

A. Definitions

- 1. Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment prohibited by Title IX.

2. Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment prohibited by Title IX against a respondent and requesting that the allegation be investigated. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. When the Title IX coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party. The allegations in a formal complaint must be investigate. In response to a formal complaint, the Title IX grievance process noted below is followed.
3. Program or Activity includes locations, events or circumstances over which the School Board excises substantial control over both the respondent and the context in which the sexual harassment occurs.
4. Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment prohibited by Title IX.
5. Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measured are designed to restore or preserve equal access to the School Board's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security or monitoring of parts of campus, and other similar measures. Any supportive measures provided to the complainant or respondent are maintained as confidential, to the extent that maintaining such confidentiality does not impair the ability to provide supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

**B. Title IX Complaint (Grievance) Process**

1. Any person may report sex discrimination prohibited by Title IX, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time, including non-business hours, by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.



2. Complainants and respondents are treated equitably by offering supportive measures to a complainant and by following this grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.
3. The Title IX Coordinator promptly contacts the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain the process for filing a formal complaint.
4. Nothing herein precludes a respondent from being removed from the School's education program or activity on an emergency basis, provided that an individualized safety and risk assessment determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and that the respondent is provided with notice and an opportunity to challenge the decision immediately following the removal.
5. Nothing herein precludes a non-student employee respondent from being placed on administrative leave during the pendency of a grievance process.
6. This grievance process treats complainants and respondents equitably by providing remedies to complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following this process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies are designed to restore or preserve equal access to the School's education program or activity.
7. The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
8. All relevant evidence is evaluated objectively, including both inculpatory and exculpatory evidence. Credibility determinations are not based on a person's status as a complainant, respondent, or witness.
9. Any Title IX Coordinator, investigator, decision-maker, or any person who facilitates an informal resolution process may not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
10. Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must receive training on the definition of sexual harassment prohibited by Title IX, the scope of the School's education program or activity, how to conduct an investigation and grievance process including appeals, and informal resolution processes, and how to serve impartially, including by avoiding pre-judgment of the facts at issue, conflicts of interest, and bias. Decision-makers receive training on

issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. Investigators receive training on issues of relevance in order to create investigative reports that fairly summarize relevant evidence.

11. A finding of responsibility may result in disciplinary action up to and including expulsion for students or dismissal of employees.
12. The standard of evidence used to determine responsibility is preponderance of the evidence.
13. This grievance process does not allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege.
14. Notice of allegations
  - a. On receipt of a formal complaint, the Title IX coordinator gives the following written notice to the parties who are known:
    - (1) notice of the grievance process, including any informal resolution process, and
    - (2) notice of the allegations of sexual harassment potentially constituting sexual harassment prohibited by Title IX, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment prohibited by Title IX, and the date and location of the alleged incident, if known.
15. The Written Notice
  - a. includes the identities of parties involved;
  - b. includes the conduct allegedly constituting sexual harassment;
  - c. includes the date and location of the alleged incident;
  - d. a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
  - e. informs the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence; and
  - f. informs the parties of any provisions in the School Board's code of conduct or the superintendent's Standards of Student Conduct that prohibit knowingly making false statements or knowingly submitting false information during the grievance process.

- g. If, in the course of an investigation, the investigator decides to investigate allegations about the complainant or respondent that are not included in the notice previously provided, notice of the additional allegations is provided to the parties whose identities are known.
16. Dismissal of formal complaints
- a. A formal complaint or any allegations therein must be dismissed if the conduct alleged in the complaint would not constitute sexual harassment prohibited by Title IX even if proved; or did not occur in the School's education program or activity; or did not occur against a person in the United States.
  - b. Such a dismissal does not preclude action under another provision of the School Board's code of conduct.
  - c. A formal complaint or any allegations therein may be dismissed if at any time during the investigation: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the School Board; or specific circumstances prevent the School Board from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
17. Investigation of formal complaint
- a. When investigating a formal complaint and throughout the grievance process, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the School Board and not on the parties provided that a party's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party are not accessed, considered, disclosed or otherwise used without the voluntary, written consent of the party's parent, or the party if the party is an eligible student, to do so for this grievance procedure.
  - b. The parties have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
  - c. The ability of the parties to discuss the allegations under investigation or to gather and present relevant evidence is not restricted.

- d. The parties have the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. The choice or presence of advisor for either the complainant or respondent is not limited in any meeting or grievance proceeding.
- e. Any party whose participation is invited or expected is provided written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings with sufficient time for the party to prepare to participate.
- f. The investigator provides both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence which will not be relied upon in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to the completion of the investigative report, the investigator must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- g. The investigator creates an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the time a determination regarding responsibility is made, sends to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.
- h. After the investigator has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker must afford each party the opportunity to submit written, relevant questions that the 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. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, 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 evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The

decision-maker(s) must explain to the party proposing the question any decision to exclude a question as not relevant.

18. Determination regarding responsibility
  - a. The decision-maker, who cannot be the same person as the Title IX Coordinator or the investigator, must issue a written determination regarding responsibility.
  - b. The written determination must include:
    - (1) identification of the allegations potentially constituting sexual harassment prohibited by Title IX;
    - (2) a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence; findings of fact supporting the determination;
    - (3) conclusions regarding the application of the School Board's code of conduct to the facts;
    - (4) a statement of, and rationale for, the result as to each allegation including a determination regarding responsibility, any disciplinary sanctions the School Board imposes on the respondent, and whether remedies designed to restore or preserve equal access to the School Board's education program or activity will be provided to the complainant; and the procedures and permissible bases for the complainant and respondent to appeal.
  - c. The decision-maker must provide the written determination regarding responsibility to the parties simultaneously.
  - d. The determination regarding responsibility becomes final either on the date that the parties are provided 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.
  - e. The Title IX Coordinator is responsible for effective implementation of any remedies.
19. Appeals
  - a. Either party may appeal from a determination regarding responsibility or from a dismissal of a formal complaint or any allegations therein, for the following reasons:
    - (1) procedural irregularity that affected the outcome of the matter;
    - (2) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

- (3) the Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- b. Notification of appeal must be given in writing to the Title IX Coordinator.
- c. As to all appeals, the Title IX Coordinator
  - (1) notifies the other party in writing when an appeal is filed and implements appeal procedures equally for both parties;
  - (2) ensures that the decision-maker for the appeal is not the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator; and ensures that the decision-maker for the appeal complies with the standards set forth in Title IX and this policy.
- d. The appeal decision-maker
  - (1) gives both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
  - (2) reviews the evidence gathered by the investigator, the investigator's report, and the decision-maker's written decision;
  - (3) issues a written decision describing the result of the appeal and the rationale for the result; and provides the written decision simultaneously to both parties and the Title IX Coordinator.

20. Timelines

- a. The investigative report will be provided to the parties within 35 days from the date the formal complaint is filed.
- b. A decision will be issued within 10 working days from the date the investigative report is submitted to the decision-maker.
- c. Either party may appeal within 5 working days from the date the written determination regarding responsibility is given to the parties.
- d. Any appeal will be resolved within 15 calendar days from the filing of the appeal.
- e. If the parties agree to an informal resolution process, these deadlines are tolled from the time one party requests an informal resolution process until either the time the other party responds, if that party does not agree to the informal resolution process, or until either party withdraws from the informal resolution process.
- f. Temporary delays of the grievance process or the limited extension of time frames for good cause with written notice to the complainant

and the respondent of the delay or extension and the reasons for the action are permitted. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; disciplinary processes required by law or School Board policy; or the need for language assistance or accommodation of disabilities.

VI. Informal Resolution Process

- A. At any time during the formal complaint process and prior to reaching a determination regarding responsibility, the parties may participate in an informal resolution process, such as mediation, that does not involve a full investigation and determination of responsibility. When one party requests an informal resolution process, the other party must respond to the request within 3 days. The informal resolution process must be completed within 10 days of the agreement to participate in the process.
- B. The informal resolution process may be facilitated by a trained educational professional, consultant, or other individual selected by the Title IX Coordinator under the following conditions:
  - 1. The parties are provided a written notice disclosing the allegations; the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; provided, however that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process, resume the grievance process with respect to the formal complaint, and be informed of any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
  - 2. The parties, voluntarily and in writing, consent to the informal resolution process; and
  - 3. The informal resolution process cannot be used to resolve allegations that an employee sexually harassed a student.
- C. If the matter is resolved to the satisfaction of the parties, the facilitator shall document the nature of the complaint and the resolution, have both parties sign the document and receive a copy, and forward it to the title IX Coordinator. If the matter is not resolved, the formal complaint process is resumed.
- D. Parties cannot be required to participate in an informal resolution process.
- E. An informal resolution process is not offered unless a formal complaint is filed.

VII. Training

- A. Training is mandatory for all school-based Title IX Coordinators, investigators, decision-makers, hearing officers, and appeals decision-makers.
- B. All training materials is available to the public on request and is located on the district's website.

VIII. Recordkeeping

- A. The School Board will maintain for a period of seven (7) years records of:
1. Each investigation of allegations of sexual harassment prohibited by Title IX including any determination regarding responsibility and any audio or audiovisual recording or transcript, if any, required under the Title IX regulations, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the school's education program or activity.
  2. Any Appeal and the result therefrom;
  3. Any informal resolution and the result therefrom; and
  4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.
  5. For each response required under 34 C.F.R. §106.44, the School Board must create, and maintain for a period of seven (7) years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment prohibited by Title IX. In each instance, the School Board will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to its education program or activity. If the School Board does not provide a complainant with supportive measures, then it will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

IX. Retaliation Prohibited

- A. Any act of retaliation against an individual who files a complaint alleging a violation of the District's antidiscrimination policy and/or sexual or illegal harassment policy or who participates in the investigation of a discrimination complaint is prohibited.
- B. Retaliation may include, but is not limited to, any form of intimidation, reprisal or harassment based upon participation in the investigation of, or filing a complaint of discrimination.

**STATUTORY AUTHORITY:**

**120.54, 1001.41, 1001.42, 1012.23, F.S.**

**LAW(S) IMPLEMENTED:**

**112.51, 119.07, 760.01 *et seq.*,  
1000.05, 1000.21, 1001.43, 1012.22, F.S.  
34 CFR 99, 34 CFR 108, 34 CFR 200.43(c), P.L.110-233  
42 U.S.C. 12112, American with Disabilities Act of 1990  
42 U.S.C. 2000ff *et seq.*, Genetic Information Non-discrimination Act of 2008  
29 U.S.C. 701 *et seq.*, Rehabilitation Act of 1973  
29 U.S.C. 621 *et seq.*, Age Discrimination in Employment Act of 1967  
20 U.S.C., 1681 *et seq.*, Title IX of the United States Education Amendments of 1972;**

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42 U.S.C., 2000e et seq., Civil Rights Act of 1964;  
29 CFR Parts 1600-1699

**STATE BOARD OF EDUCATION RULE(S):**

**6A-19.001 et seq.**

**HISTORY:**

**ADOPTED: 10/22/2019**

**REVISION DATE(S): 12/15/2020, 03/23/2021**

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