

## **SEX DISCRIMINATION AND SEX-BASED HARASSMENT UNDER TITLE IX REGULATION**

### **GRIEVANCE PROCEDURE**

The Yonkers City School District has adopted a grievance procedure that provides for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

#### Complaints

The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that the District investigate and make a determination about alleged discrimination under Title IX:

1. A “complainant,” which includes:
  - a. a student or employee of the District who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
  - b. a person other than a student or employee of the District who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in the District’s education program or activity;
2. A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
3. The District’s Title IX Coordinator.

A person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 CFR §106.44(f)(1)(v).

With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint:

1. Any student or employee of the District; or
2. Any person other than a student or employee who was participating or attempting to participate in the District’s education program or activity at the time of the alleged sex discrimination.

The District may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

## Basic Requirements of Title IX Grievance Procedures

The District will treat complainants and respondents equitably.

The District requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A decisionmaker may be the same person as the Title IX Coordinator or investigator.

The District presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

The District has established the following approximate timeframes for the major stages of the grievance procedures, unless extended as described below:

- Evaluations of a complaint (i.e., whether to dismiss or investigate a complaint) will conclude no more than ten (10) school days following receipt of complaint.
- Investigations of complaints that have not been dismissed will begin no more than fifteen (15) school days following receipt of complaint.
- Determinations will be made approximately thirty (30) school days following receipt of complaint.
- Appeals of a dismissal or determination must be submitted within ten (10) days following receipt of the dismissal or determination, as applicable.
- Appeals will be decided approximately thirty (30) school days following receipt of the appeal.

Please note that the timeframes provided above are intended solely as guidelines and may be adjusted as needed due to the complexity of the investigation or for other good cause. Accordingly, the District has established a process to permit the reasonable extension of timeframes on a case-by-case basis, with notice to the parties that includes the reason for the delay:

- Examples of reasons for good cause of delay of timeframes include, but are not limited to: illness of District staff necessary to complete the Title IX grievance process, illness or absence of parties and witnesses, difficulty locating witnesses or evidence, death or serious illness of an immediate family member of necessary District staff, parties, or relevant witnesses, loss or destruction of pertinent records, difficulty scheduling meetings with parties and witnesses, school holidays.
- Requests for an extension of a timeframe by a party must be submitted to the Title IX Coordinator, investigator, or decisionmaker at least five (5) days prior to the expiration of the timeframe. The Title IX Coordinator, investigator, or decisionmaker will evaluate the request for an extension and make a prompt determination whether to extend the timeframe. The Title IX Coordinator, investigator, or decisionmaker will provide written notification to the parties, either denying the request or outlining the reason(s) for the delay along with the revised estimated completion date for the remaining stages in the timeframe.
- In the event the Title IX Coordinator, investigator, or decision-maker determines additional time is required without having received a specific request, they will issue a written

notification to the parties within three (3) days of the determination. The notification will outline the reason(s) for the delay and provide a revised estimated completion date for the remaining stages in the timeframe.

The District will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses.

The District will objectively evaluate all evidence that is relevant and not otherwise impermissible – including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the District to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

1. Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
2. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the District obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
3. Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

### Notice of Allegations

Upon initiation of the District's Title IX grievance procedures, the District will notify the parties of the following:

1. The District's Title IX grievance procedures and any informal resolution process;
2. Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
3. Retaliation is prohibited; and

4. The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

The Title IX Coordinator will notify the respondent that if behavior prohibited under Title IX or another District policy has occurred, it must cease immediately.

If, in the course of an investigation, the District decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided or that are included in a complaint that is consolidated, the District will notify the parties of the additional allegations.

### Dismissal of a Complaint

The District may dismiss a complaint of sex discrimination if:

1. The District is unable to identify the respondent after taking reasonable steps to do so;
2. The respondent is not participating in the District's education program or activity and is not employed by the District;
3. The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the District determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
4. The District determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, the District will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, the District will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the District will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

The District will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then the District will also notify the respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

1. Procedural irregularity that would change the outcome;
2. New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
3. The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

If the dismissal is appealed, the District will:

1. Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
2. Implement appeal procedures equally for the parties;
3. Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
4. Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;
5. Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
6. Notify the parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, the District will, at a minimum:

1. Offer supportive measures to the complainant, as appropriate;
2. If the respondent has been notified of the allegations, offer supportive measures to the respondent, as appropriate; and
3. Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not occur, continue, or recur within the District's education program or activity.

### Investigation

The District will provide for adequate, reliable, and impartial investigation of complaints. The burden is on the District – not on the parties – to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

The District will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible. The District will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

The District will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

1. The District will provide an equal opportunity to access an accurate description of the relevant and not otherwise impermissible evidence. The District will further provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party;
2. The District will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
3. The District will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

### Questioning the Parties and Witnesses

The decisionmaker will adequately assess the credibility of parties and witnesses, where credibility is both in dispute and relevant to evaluating the allegation(s) of sex discrimination. If the decisionmaker serves as the investigator, they will evaluate the credibility of parties and witnesses while questioning the parties and witnesses during the investigation. If the decisionmaker does not serve as the investigator, the Title IX Coordinator will coordinate interviews of parties and witnesses for the decisionmaker to assess their credibility.

### Determination Whether Sex Discrimination Occurred

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the District will:

1. Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
2. Notify the parties in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable;
3. Not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.
4. If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
  - a. Coordinate the provision and implementation of remedies to a complainant and other people the District identifies as having had equal access to the District's education program or activity limited or denied by sex discrimination;
  - b. Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
  - c. Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the District's education program or activity.
5. Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent; and
6. Not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

### Appeal of Determinations

The District offers the following process for appeals from a determination whether sex discrimination occurred:

1. Appeals must be made in writing to the Superintendent, must state the basis for the request, and must include any material or information that support the claims.
2. The Superintendent or designee will notify the other party in writing that an appeal has been submitted, provide the appeal request to the other party, and allow the party to submit an optional response statement within ten (10) days of receipt of the notice.
3. Appeals will generally not include new hearings, interviews or investigations; however, the Superintendent or designee may conduct such if deemed necessary.
4. Appeals will be decided approximately thirty (30) school days following receipt of the appeal. If additional time is needed to complete the review, the Superintendent or designee will provide all parties with a written status report within thirty (30) school days following receipt of the appeal.
5. The Superintendent or designee may sustain or modify the original decision, and will notify both parties in writing of the decision after the conclusion of the review.
6. The decision of the Superintendent is final.
7. This appeal process will be, at a minimum, the same as the District offers in all other comparable proceedings, including proceedings relating to other discrimination complaints.

### Informal Resolution

In lieu of resolving a complaint through the District's Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. The District does not offer informal resolution to resolve a complaint that includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or when such a process would conflict with Federal, State, or local law.

### Related District Policies

If a Title IX complaint is dismissed, or if the District determines through its Title IX complaint resolution process that there was not a violation of Title IX, the District will proceed under other applicable policies. The Title IX Coordinator will facilitate the transfer of information gathered through the Title IX complaint process to be used in the application of the District's other policies.

### Supportive Measures

The District will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person's access to the District's education program or activity or provide support during the District's Title IX grievance procedures or during the informal resolution process. For complaints of sex-based harassment, these supportive measures may include, but are not limited to:

1. Counseling;
2. Extensions of deadlines and other course-related adjustments;
3. Escorts while on school grounds or activities;
4. Increased security and monitoring of certain areas of the District;

5. Restrictions on contact applied to one or more parties;
6. Leaves of absence;
7. Changes in class, work, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and
8. Training and education programs related to sex-based harassment.

### Disciplinary Sanctions and Remedies

Following a determination that sex-based harassment occurred, the District may impose disciplinary sanctions, which may include, but are not limited to:

1. Student respondents: consequences may include warning, reprimand, detention, in-school suspension, and suspension from school, to be imposed consistent with the District's Code of Conduct and applicable law;
2. Employee respondents: consequences may include warning, reprimand, mandatory counseling, re-assignment, demotion, suspension, and termination, to be imposed consistent with all applicable contractual and statutory rights;
3. Volunteer respondents: consequences may include warning, reprimand, loss of volunteer assignments, and removal from future volunteer opportunities; and
4. Vendor respondents: consequences may include warning, removal from school property, denial of future access to school property, and denial of future business with the District.
5. Other individuals: consequences may include warning, removal from school property, and denial of future access to school property.

The Title IX Coordinator will facilitate the transfer of information and determinations from the Title IX complaint process to the appropriate administrator, to aid in the imposition of disciplinary consequences.

The District may also provide remedies, which may include, but are not limited to:

1. Training of entire departments, classes, or groups;
2. Peer support groups;
3. Letters of apology;
4. Separation of the parties;
5. Additional supervision or mentoring for the respondent; and
6. Restitution and restoration.

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