

# ACAB-R2 - EMPLOYEE SEX DISCRIMINATION/HARASSMENT COMPLAINT PROCEDURE

## **ACAB-R2 - EMPLOYEE SEX DISCRIMINATION/HARASSMENT COMPLAINT PROCEDURE**

The Board has adopted this employee procedure in order to provide prompt and equitable resolution of reports and complaints of unlawful sex discrimination, including allegations of sexual harassment and other forms of sex-based harassment, as described in Policies AC – Nondiscrimination/Equal Opportunity and Affirmative Action and ACAB – Harassment of Employees.

Although the specific provisions under Title IX and Maine law differ somewhat in regard to sex discrimination and sexual/sex-based harassment, the Board has chosen to address all such complaints under this procedure, which meets all Title IX and Maine law requirements.

Complaints alleging unlawful discrimination or harassment of an employee on the basis of other protected categories (race; color; religion; ancestry or national origin; age; disability; and genetic information) are addressed under ACAB-R1 – Employee Discrimination and Harassment Complaint Procedure.

Complaints alleging unlawful discrimination and harassment of an employee are addressed under ACAB-R1 - Employee Discrimination and Harassment Complaint Procedure or ACAB-R2 – Employee Sex Discrimination and Sexual/Sex-Based Harassment Complaint Procedure.

Any individual who is unsure about whether unlawful discrimination or harassment has occurred and/or which complaint procedure applies is encouraged to contact the Affirmative Action Officer/Title IX Coordinator:

Heidi Early

Affirmative Action Officer/Title IX Coordinator

MSAD #35

180 Depot Road, Eliot, ME 03903

207-439-2438

## **Section 1. Definitions**

For purposes of this complaint procedure, the following definitions will be used.

- A. "Complainant" means: (1) the employee victim of alleged sex discrimination (including sexual/sex-based harassment); or (2) other victim of alleged sex discrimination (including sexual/sex-based harassment) who was participating or attempting to participate in the school unit's education programs or activities at the time of the alleged sex discrimination.
- B. "Complaint" under the Title IX regulations: An oral or written request to MSAD 35 to investigate and make a determination about alleged discrimination under Title IX." An oral request for investigation should be documented by the Affirmative Action Officer/Title IX Coordinator.
- C. "Confidential employee" means: (1) an employee of the school unit whose communications are privileged or confidential under federal or state law. The employee's confidential status, for purposes of Title IX, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or (2) an employee of the school unit designated as confidential for the purpose of providing services to persons related to sex discrimination (in which case the employee's confidential status applies only to information received about sex discrimination in connection with providing those services).
- D. "Discrimination": Treating individuals differently, or interfering with or preventing them from enjoying the advantages or privileges afforded to others because of their membership in a protected category.
- E. "Gender identity": The gender-related identity, appearance, mannerisms or other gender-related characteristics of an individual, regardless of the individual's assigned sex at birth."
- F. "Parental status": The status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is: (1) a biological parent; (2) an adoptive parent; (3) a foster parent; (4) a stepparent; (5) a legal custodian or guardian; (6) in loco parentis with respect to such a person; or (7) actively seeking legal custody, guardianship, visitation, or adoption of such a person."
- G. "Party": A complainant or respondent.
- H. "Pregnancy and related conditions" includes "(1) Pregnancy, childbirth, termination of pregnancy, or lactation; (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or (3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions."
- I. "Respondent": A person who is alleged to have violated the school unit's prohibition on sex discrimination.

J. "Retaliation" under Title IX: Intimidation, threats, coercion, or discrimination against any person by the school unit, an employee, or other person authorized by the recipient to provide aid, benefit, or services under MSAD 35's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX/regulations, or because the person has reported information, made a complaint, testified, assisted, or participating or refused to participate in any manner in an investigation, proceeding, or other action taken by a school unit in regard to allegations of sex discrimination."

K. "Sex-based harassment" under Title IX: Harassment on the basis of sex, including sexual orientation, gender identity, sex stereotypes, sex characteristics, pregnancy, or related conditions, that meets one of the following:

1. "Quid pro quo" harassment by a school employee, agent, or other person authorized by the school unit to provide aid, benefit, or service under an education program or activity, explicitly or impliedly conditioning the provision of such aid, benefit, or service on the individual's participation in unwelcome sexual conduct.
2. "Hostile environment" harassment: Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive, and is so severe or pervasive that it limits or denies an individual's ability to participate in or benefit from the school unit's education program or activity (i.e., creates a hostile environment). A school unit is obligated to address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity. Whether a hostile environment has been created is a fact-based inquiry that includes consideration of a number of factors.
  - i. Factors to consider in regard to the creation of a "hostile environment": "(i) the degree to which the conduct affected the complainant's ability to access the [school unit's] education program or activity; (ii) the type, frequency, and duration of the conduct; (iii) the parties' ages, roles within the [school unit's] education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct; (iv) the location of the conduct and the context in which the conduct occurred; and (v) other sex-based harassment in the [school unit's] education program or activity."
3. Sexual assault, dating violence, domestic violence, and stalking, as these terms are defined below.
  - i. "Sexual assault" is an offense classified as a forcible or nonforcible sex offense under the uniform reporting system of the Federal Bureau of Investigation. Such offenses include but are not limited to, rape, sodomy, sexual assault with an object, and fondling.
  - ii. "Dating violence" is violence committed by a person: (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; (b) where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship, (2) the type of relationship; and (3)

the frequency of interaction between the persons involved in the relationship.”

iii. “Domestic violence” is defined in the Title IX regulations as “Felony or misdemeanor crimes committed by a person who: (a) is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situation to a spouse of the victim; (b) is cohabitating, or has cohabitated with the victim as a spouse or intimate partner; (c) shares a child in common with the victim; or (d) commits acts against a youth or adult who is protected from those acts under the family or domestic violence laws of the jurisdiction.”

iv. “Stalking”: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (a) fear for the person’s safety or the safety of others; or (b) suffer substantial emotional distress.”

L. “Sexual harassment” under Maine law: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature in the following situations:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an employee’s educational benefits;
2. Submission to or rejection of such conduct by an employee is used as the basis for decisions on educational benefits; or
3. Such conduct has the purpose and effect of substantially interfering with an employee’s academic performance or creates an intimidating, hostile, or offensive environment.

M. “Sexual orientation”: Under Maine law: A person’s “actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity or expression.” Sexual orientation is also covered by Title IX.

## **Section 2. Complaint Procedure**

This procedure should be used to address any report or complaint of sex discrimination or sexual/sex-based harassment of an employee.

### **A. Reports of Alleged Sex Discrimination or Sexual/Sex-Based Harassment**

1. Any school unit employee (except for designated confidential employees) who receives a report or has reason to believe that an employee may have been discriminated against or harassed on the basis of sex is required to make a report to the Affirmative Action Officer/Title IX Coordinator.
2. Confidential employees who receive a report that an employee may have experienced sex discrimination or sexual/sex-based harassment must inform the person making the report that the employee is designated “confidential” and inform them of the circumstances in which the employee is not required to make a report to the Affirmative Action Officer/Title IX Coordinator. The confidential employee will provide the reporter with the Affirmative

Action Officer/Title IX Coordinator's contact information and explain that the Affirmative Action Officer/Title IX Coordinator may be able to offer and coordinate supportive measures, initiate an informal resolution process, or initiate an investigation under this complaint procedure.

3. Employees who believe that they have been discriminated against or harassed on the basis of sex should report their concern promptly to the Affirmative Action Officer/Title IX Coordinator. The report will be documented by the Affirmative Action Officer/Title IX Coordinator.
4. The individual making the report should provide basic, available information orally or in writing concerning the allegation (i.e., individuals involved, date, time, location, and type of allegation). If the information is conveyed orally, the Affirmative Action Officer/Title IX Coordinator will document it.
5. If an individual is unsure as to whether unlawful discrimination or harassment has occurred, they are encouraged to discuss the matter with the Affirmative Action Officer/Title IX Coordinator.
6. Individuals will not be retaliated against for reporting suspected discrimination or harassment or for participating in an investigation. Retaliation is illegal under federal/state nondiscrimination laws and Board policies, and any retaliation will result in disciplinary action, up to and including termination.
7. The Superintendent will be promptly notified of all reports of alleged discrimination or harassment of an employee.
8. An employee who believes they have been discriminated against or harassed on the basis of sex is encouraged to utilize this complaint procedure. However, employees are hereby notified that they also have the right to report incidents of discrimination or harassment to:
  - Maine Human Rights Commission, 51 State House Station, Augusta, Maine 04333; telephone: 207-624-6290; website: <https://www.maine.gov/mhrc/>); and/or
  - Office for Civil Rights, U.S. Department of Education, 5 Post Office Square, 8th Floor, Boston, MA 02109-3921 (telephone: 617-289-0111; website: [https://ocrcas.ed.gov/contact-ocr?field\\_state\\_value=688](https://ocrcas.ed.gov/contact-ocr?field_state_value=688)).

## **B. Processing of Complaints**

1. The Affirmative Action Officer/Title IX Coordinator will treat complainants and respondents equitably through the complaint procedure.
2. If the individual making the report is the alleged victim, or if the alleged victim is identified by the individual making the report, the Affirmative Action Officer/Title IX Coordinator will meet with the alleged victim to discuss the allegations and supportive measures that may be appropriate in the particular circumstances and to explain the complaint procedure.

If the alleged victim is unknown to the Affirmative Action Officer/Title IX Coordinator, the person who made the report will be notified of the availability of the complaint procedure.

### 3. Supportive Measures

- a. Supportive measures are individualized measures designed to ensure the employee can continue to access and perform their work (including but not limited to: requiring no contact between individuals, temporarily moving work locations, and changing schedules).
- b. Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties or the school unit's educational environment or to provide support during the complaint procedure or an informal resolution process. The school unit may not impose such measures for punitive or disciplinary reasons.
- c. Supportive measures may be continued even if a complaint or informal resolution process is not initiated, or after the conclusion of such processes, if appropriate under the circumstances.
- d. Complainants and respondents must be provided with a timely opportunity to seek, from an appropriate and impartial employee, modification or reversal of a decision to provide, deny, modify, or terminate supportive measures applicable to them. This employee must not be the Affirmative Action Officer/Title IX Coordinator and must have the authority to modify or reverse the decision.
- e. Complainants and respondents also have the opportunity to seek additional modification or termination of a supportive measure applicable to them if circumstances change.
- f. The school unit will not disclose information about supportive measures to persons other than the person to whom they apply unless it is necessary to provide a supportive measure or to restore or preserve a party's access to education programs and activities.

4. If the Affirmative Action Officer/Title IX Coordinator reasonably determines that the conduct alleged does not involve illegal discrimination or harassment, the school unit is not obligated to initiate the complaint process and may dismiss the complaint (See Subsection C.1. below). If the alleged conduct potentially violates other laws, Board policies/procedures, or professional expectations (in the case of employees), the matter may be referred to the Superintendent and/or other appropriate administrator(s) to address as deemed appropriate.

5. In response to a complaint alleging prohibited sex discrimination or sexual/sex-based harassment, the Affirmative Action Officer/Title IX Coordinator will initiate the complaint process or the informal resolution process (if available and appropriate) according to this procedure. When feasible, the decision to initiate an investigation or informal resolution process or dismiss the complaint will be made within ten (10) school days of receipt of the complaint.
6. In certain circumstances, the Affirmative Action Officer/Title IX Coordinator may initiate the investigation process, even when the alleged victim chooses not to, after any or all allegations are withdrawn by the alleged victim, or when an informal resolution process is not initiated or is terminated. To make this fact-specific determination, the Affirmative Action Officer/Title IX Coordinator will consider, at a minimum:

- a. The complainant's request not to proceed with initiating a complaint;
- b. The complainant's reasonable safety concerns regarding initiating a complaint;
- c. The risk that additional acts of discrimination or harassment would occur if a complaint is not initiated;
- d. The severity of the alleged discrimination or harassment, including whether the discrimination, if established, would require the removal of a respondent from school or imposition of another disciplinary sanction to end the discrimination or harassment and prevent its recurrence;
- e. The age and relationship of the parties, including whether the respondent is an employee of the school unit;
- f. The scope of the alleged discrimination or harassment, including information suggesting a pattern, ongoing discrimination/harassment, or discrimination/harassment alleged to have impacted multiple individuals;
- g. The availability of evidence to assist a decisionmaker in determining whether discrimination or harassment occurred; and
- h. Whether the school unit could end the alleged discrimination or harassment and prevent its recurrence without initiating the complaint procedure.

If, after considering these and any other factors that may be relevant, the Affirmative Action Officer/Title IX Coordinator determines that the alleged conduct presents an imminent and serious threat to the health or safety of the complainant or other individuals, or that the alleged conduct prevents the school unit from ensuring equal access to its education programs and activities, the Affirmative Action Officer/Title IX Coordinator may initiate a complaint.

- 7. If the Affirmative Action Officer/Title IX Coordinator initiates a complaint, the complainant will receive prior notice, and any reasonable safety concerns will be addressed.
- 8. The Affirmative Action Officer/Title IX Coordinator will confirm the initiation of an investigation or informal resolution process in writing to both parties. The communication will include: a) a copy of the complaint procedure; b) sufficient information available at the time to allow the parties to respond to the allegations (including the identities of the parties involved, the conduct alleged to constitute sex discrimination or sexual/sex-based harassment, and the date(s) and location(s) of the alleged incident(s); c) notice that retaliation is prohibited; and d) notice that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence.
- 9. Regardless of whether an investigation is initiated, the Affirmative Action Officer/Title IX Coordinator will take appropriate, prompt, and effective steps to ensure that discrimination or harassment does not continue or recur. The Affirmative Action Officer/Title IX Coordinator will also coordinate supportive measures, as appropriate.
- 10. If the Affirmative Action Officer/Title IX Coordinator decides to investigate additional allegations of discrimination or harassment made by the complainant against the

respondent after the parties received notice of the complaint, the Affirmative Action Officer/Title IX Coordinator will notify the parties of the additional allegations in writing.

11. The Affirmative Action Officer/Title IX Coordinator may consolidate complaints of discrimination or harassment 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 arise out of the same facts or circumstances.
12. The school unit will presume that the respondent is not responsible for alleged discrimination or harassment until a determination is made at the conclusion of the investigation.
13. The school unit will take reasonable steps to protect the privacy of the parties and witnesses during the complaint procedure and will comply with applicable state and federal privacy laws. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; confidential employees/resources; or otherwise prepare for and participate in the complaint procedure.

### **C. Dismissal of Complaints**

1. The Affirmative Action Officer/Title IX Coordinator may dismiss a complaint in the following circumstances:
  - a. The school unit is unable to identify a respondent after taking reasonable steps to do so;
  - b. The respondent is not participating in the school unit's education programs and activities, or is not employed by the school unit;
  - c. The complainant voluntarily withdraws any or all allegations in the complaint, the Affirmative Action Officer/Title IX Coordinator declines to initiate a complaint and determines that, without the complainant's withdrawn allegations, the alleged conduct remaining, if any, would not constitute discrimination or harassment even if proven; or
  - d. The Affirmative Action Officer/Title IX Coordinator determines that the conduct alleged in the complaint, even if proven, would not constitute discrimination or harassment under state/federal laws and regulations.
2. Upon dismissal, the Affirmative Action Officer/Title IX Coordinator will promptly notify the complainant (and the respondent, if they had received notice of the complaint allegations) of the basis for the dismissal, and provide the opportunity to appeal the dismissal.
3. Dismissals may be appealed on the following bases:
  - a. Procedural irregularity that would change the outcome;
  - b. New evidence that would change the outcome and that was not reasonably available when the dismissal [or determination in the case] was made; and
  - c. The Affirmative Action Officer/Title IX Coordinator, investigator, or decision maker had a conflict or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.



4. An appeal of a complaint dismissal must be made in writing to the Affirmative Action Officer/Title IX Coordinator within five (5) school days and state the basis for the appeal.
5. If the dismissal is appealed, the Affirmative Action Officer/Title IX Coordinator shall:
  - a. Notify the respondent of the appeal if they had received notice of the complaint allegations;
  - b. Implement the appeal procedure equally for the parties;
  - c. Ensure that the trained decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
  - d. Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
  - e. Notify the parties in writing of the result of the appeal and the rationale for it within five (5) school days, if feasible.
6. When a complaint is dismissed, the Affirmative Action Officer/Title IX Coordinator will, at a minimum:
  - a. Offer supportive measures to the complainant and respondent if appropriate; and
  - b. Take other prompt and effective steps, as appropriate, to ensure that discrimination or harassment does not continue or recur within the school unit's program or activity.
7. The Affirmative Action Officer/Title IX Coordinator will document actions taken during the appeal process.

#### **D. Administrative Leave**

1. The Superintendent may place an employee respondent on administrative leave during the complaint procedure in accordance with any applicable state laws, school policies, and collective bargaining unit provisions.
2. Any decision to place an employee respondent on administrative leave shall be made in compliance with any applicable disability laws, including Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.
3. The Affirmative Action Officer/Title IX Coordinator will document actions taken during the administrative leave process.

[Note: The Superintendent may remove a student from education programs and activities on an emergency basis during the complaint procedure in accordance with the procedures set forth in ACAA-R2, Section 2.D]

#### **E. Informal Resolution Process**

1. Informal resolution is not permitted in cases where a student is the complainant and an employee is the respondent to alleged sex discrimination or harassment [such cases should be addressed under Procedure ACAA-R2].
2. The Action Officer/Title IX Coordinator may, if appropriate, offer the parties the opportunity to resolve the complaint through an informal resolution process at any point prior to an investigation or determination of responsibility. Engaging in an informal resolution process is voluntary on the part of each party. The Affirmative Action Officer/Title IX Coordinator also may decline to pursue an informal resolution despite a party's request (for example, if the alleged conduct presents a future risk of harm to the complainant or others).
3. Both (or all) parties must voluntarily agree in writing to participate in an informal resolution process, and a party may withdraw from the process at any time. The parties will not be required to attend meetings together unless they voluntarily agree to do so.
4. Before initiating an informal resolution process, the Affirmative Action Officer/Title IX Coordinator will ensure that the parties receive notice of: i.) the allegations; ii.) the requirements of the informal resolution process; iii.) the right of any party to withdraw from the process and initiate or resume the investigation process; iv.) that the parties' agreement to an informal resolution would preclude them from initiating or resuming the investigation; v.) potential terms that may be requested or offered in an informal resolution agreement, including notice that an agreement is binding on the parties; and vi.) what information the school unit will maintain regarding the informal resolution process.

[Note: Informal resolutions can take many forms, depending on the particular case, including but not limited to: restrictions on contact between the parties; facilitated discussions between the parties; restorative justice; acknowledgment of responsibility by a respondent; apologies; disciplinary actions against a respondent or requirements to engage in specific services; or supportive measures.]

5. The facilitator for the informal resolution process must be trained, cannot be the same person as the investigator or decisionmaker in the matter, and must not have a conflict of interest or bias regarding parties to such matters generally or to an individual complainant or respondent.
6. The Superintendent must agree to the terms of any informal resolution reached between the parties, considering whether the resolution is in the best interest of the parties and the school unit in light of the particular circumstances, applicable laws/regulations, and Board policies.
7. If an informal resolution agreement is reached, it will be agreed to in writing by both parties and the Affirmative Action Office/Title IX Coordinator. Any such agreement is final and binding on the parties.

## **F. Investigation Process**

1. The complaint will be investigated by a trained internal or external individual designated by the Superintendent and the Affirmative Action Officer/Title IX Coordinator. The investigator shall not have a conflict of interest or bias against complainants or

respondents generally, or an individual complainant or respondent, and will consult with the Affirmative Action Officer/Title IX Coordinator during the investigation process.

2. Any complaint about an employee who holds a supervisory position will be investigated by a person not subject to that supervisor's authority. Any complaint about the Superintendent will be submitted to the Board Chair, who will consult with legal counsel concerning the handling and investigation of the complaint.
3. If the complaint is against an employee of the school unit, any rights conferred under an applicable bargaining agreement will be applied to the extent they do not conflict with the requirements of Title IX and accompanying regulations.
4. The burden is on the school unit, and not the parties, to gather sufficient evidence (through the investigation) in order to determine whether illegal discrimination or harassment occurred.
5. The investigator shall provide an opportunity for the complainant and respondent to be heard as part of the investigation. The parties will not be required to attend meetings together.
6. The parties may suggest witnesses to be interviewed and/or submit materials that they believe are relevant to the allegations and complaint.
7. The investigator will evaluate 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.
  - a. The Title IX regulations define "relevant" as "related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred."
8. The following types of evidence, and questions seeking that evidence, are impermissible:
  - a. 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 in writing.
  - b. 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 treatment to the party or witness, unless the school unit obtains that party's or witness's voluntary, written consent for use in the complaint procedure; and
  - c. 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 alleged sexual/sex-based harassment 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 sexual/sex-based harassment. The fact of prior 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 a determination that sex-based harassment occurred.

9. The investigator will provide each party with the opportunity to review the evidence that is relevant to the allegations of discrimination or harassment (and not otherwise impermissible), and to respond to it.
10. The Affirmative Action Officer/Title IX Coordinator and investigator will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the complaint procedure. Disclosure of such information and evidence for the purposes of administering administrative proceedings or litigation related to the complaint are authorized.
11. The investigator will conclude the investigation and issue a written report to the Affirmative Action Officer/Title IX Coordinator within forty (40) school days, if feasible.
  - a. If the investigator has been charged with making a determination of responsibility/non-responsibility with respect to each allegation, such determination(s) and the reasons, therefore, shall be included in the report.
12. Extensions of time may be granted to complete the investigation if approved by the Affirmative Action Officer/Title IX Coordinator for reasonable cause. Notice of any extension and the reasons, therefore, will be provided to the parties.

## **G. Determinations of Responsibility**

1. The standard used to determine whether illegal discrimination or harassment occurred is the preponderance of the evidence standard ("more likely than not").
2. The decision maker will review the investigation report, the evidence gathered (as appropriate), and will have the discretion to conduct additional interviews of parties and/or witnesses if needed to assess credibility.
3. The decision maker will make a written determination of responsibility/non-responsibility in regard to each allegation and the reasons, which shall be shared with the Affirmative Action Officer/Title IX Coordinator and the parties.
4. In general, the Affirmative Action Officer/Title IX Coordinator will notify the parties of the determination decision(s) within five (5) school days of the determination being reached. Reasonable extensions of time may be approved by the Affirmative Action Officer/Title IX Coordinator for good reason. The notification will include the permissible bases for appeal and the deadline for receipt of appeals.
5. If there is a determination that the respondent is responsible for violations, the appropriate administrator will make decisions as to appropriate disciplinary action and remedies.
6. The Affirmative Action Officer/Title IX Coordinator shall, as appropriate:
  - a. Coordinate the provision and implementation of remedies to a complainant and any other persons if necessary to provide equal access to the school unit's educational programs and activities that had been limited or denied by discrimination or harassment;
  - 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 if necessary to ensure discrimination and harassment does not continue or recur.
7. A determination of responsibility becomes final on the date that the Affirmative Action Officer/Title IX Coordinator provides the parties with the written determination of the results of the appeal if an appeal is filed. If an appeal is not filed, the determination of responsibility becomes final on the date on which the appeal would no longer be considered timely.
8. The school unit will not discipline a party, witness, or others participating in the complaint procedure for making a false statement or for engaging in consensual sexual conduct based solely on the determination that sex discrimination or sexual/sex-based harassment occurred.

## **H. Remedies, Discipline, and Other Actions**

### **1. Remedies**

Remedies are measures used to ensure that the complainant has equal access to the school unit's education programs and activities following the decision maker's determination(s). Such remedies may include supportive measures and may include other appropriate measures, depending on the determination(s) and the needs of the complainant. The Affirmative Action Officer/Title IX Coordinator is responsible for implementing remedies and providing any needed assistance to the complainant.

### **2. Discipline and Other Actions**

Examples of disciplinary and other actions that may be imposed on a student when there is a determination that they are responsible for one or more violations of sexual/sex-based harassment include suspension, expulsion, restorative justice, required education or counseling, and other measures.

Examples of disciplinary actions that may be imposed on an employee when there is a determination that they are responsible for one or more violations of sexual/sex-based harassment include: written warning, probation, counseling, demotion, suspension without pay, termination.

## **I. Appeals**

1. After the conclusion of the investigation and decision maker determination(s), the complainant or respondent may seek an appeal of the findings based on the following factors:
  - a. Procedural irregularity that would change the outcome;
  - b. New evidence that would change the outcome and that was not reasonably available when the determination was made; and

c. The Affirmative Action Officer/Title IX Coordinator, investigator, or decision maker had a conflict or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

2. The appeal must be made in writing to the Affirmative Action Officer/Title IX Coordinator within five (5) school days and state the basis for the appeal.
3. The Superintendent is responsible for making a determination on the appeal. The Superintendent will conduct an impartial review of the appeal, including consideration of the written record in the case, and may consult with legal counsel or other school unit officials in making their decision.
4. The Superintendent will issue the appeal determination in writing within ten (10) school days of receipt of the appeal, if feasible.
5. The Superintendent's decision is final.

### **Section 3. Recordkeeping**

The Affirmative Action Officer/Title IX Coordinator shall maintain a record of documents and action in each case, and records of training(s) provided, for a period of seven (7) years.

#### **Cross References:**

AC – Non Discrimination/Equal Opportunity and Affirmative Action

ACAB – Harassment of Employees

ACAB-R1 – Employee Discrimination and Harassment Complaint Procedure

ACAB-R2 – Employee Sex Discrimination/Harassment Complaint Procedure

GBEG - Pregnant Employees

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