

# INTERIM GRIEVANCE PROCEDURES FOR SEXUAL HARASSMENT

STATE OF HAWAII DEPARTMENT OF EDUCATION  
OFFICE OF TALENT MANAGEMENT  
CIVIL RIGHTS COMPLIANCE BRANCH  
2020

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### AGENDA

<ol style="list-style-type: none"> <li>1. Title IX of the</li> <li>2. Timeline</li> <li>3. New Title IX Regulations</li> <li>4. Definitions</li> <li>5. Reports of Sexual Harassment</li> <li>6. Formal Complaints</li> <li>7. Emergency Removals &amp; Administrative Leave</li> </ol>	<ol style="list-style-type: none"> <li>8. Investigation Process           <ul style="list-style-type: none"> <li>• General Provisions</li> <li>• Advisors</li> <li>• Gathering Evidence</li> <li>• Inspection and Review of Evidence</li> </ul> </li> <li>9. Decision-Making           <ul style="list-style-type: none"> <li>• Written Relevant Questions</li> </ul> </li> <li>10. Appeals Process</li> <li>11. Training Requirements</li> <li>12. Record Keeping Requirements</li> </ol>
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### TITLE IX OF THE EDUCATIONAL AMENDMENTS OF 1972

“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.”  
20 U.S.C. §1681(a)

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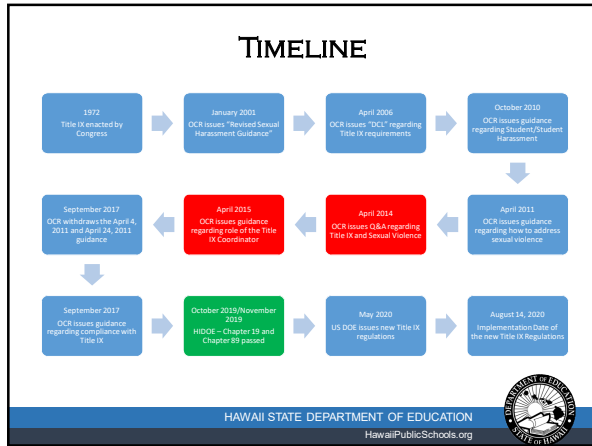
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### NEW TITLE IX REGULATIONS

Creates a process of addressing reports/complaints of sexual harassment where the HIOE must:

“... respond promptly and supportively to persons alleged to be victimized by sexual harassment, resolve allegations of sexual harassment promptly and accurately under a predictable, fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment, and effectively implement remedies for victims.”

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### DEFINITIONS — ACTUAL KNOWLEDGE

**Actual Knowledge**  
Means notice of sexual harassment or allegations of sexual harassment to any employee of an elementary and secondary school.

- When any HIOE employee has notice of sexual harassment or allegations of sexual harassment, they must report the such knowledge to their administrator or supervisor.
- Administrators and supervisors, must then report to the Civil Rights Compliance Branch (CRCB).

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**DEFINITIONS –  
FORMAL COMPLAINT/DOCUMENT FILED BY A  
COMPLAINANT**

**Formal complaint**

- A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.
- 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 recipient with which the formal complaint is filed.

**Document Filed by a Complainant**

- Means a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.



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**DEFINITIONS –  
SEXUAL HARASSMENT**

Conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome 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; or
- (3) "Sexual assault," "dating violence," "domestic violence," or "stalking."



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**DEFINITIONS – SEXUAL ASSAULT**

Any attempted or actual sexual act directed against another person, without consent of the victim, including instances where the victim is incapable to giving consent.

- Rape is the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
- Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory rape is sexual intercourse with a person who is under the statutory age of consent.



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### DEFINITIONS — DATING VIOLENCE

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
- The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- For the purposes of this definition dating violence includes, but is not limited to sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.



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### DEFINITIONS — DOMESTIC VIOLENCE

Violence committed by:

- A current or former spouse or intimate partner of the victim; by a person with who the victims shares a child in common;
- By a person who is cohabiting with, or has cohabited with, the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- By any other against an adult or youth victim who is protected from the person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.



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### DEFINITIONS - STALKING

- Engaging in a course of conduct directed at a specific person that cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.
- For purposes of this definition, course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly or through third parties by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.



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### SUPPORTIVE MEASURES

- Non-disciplinary, non-punitive individualized services offered as appropriate, to the complainant or the respondent.
- They are designed to restore or preserve equal access to the HIDOE's education program or activity without unreasonably burdening the other party.
- The HIDOE must maintain as confidential any supportive measures provided to the complainant or respondent.

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 or housing locations,
- Leaves of absence,
- Increased security and monitoring of certain areas of the campus, and
- Other similar measures.


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### DEFINITIONS – CONTINUED

“Notice” includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator or any HIDOE employee, and observation or witnessing of sexually harassing conduct by any HIDOE employee.

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.


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### DEFINITIONS – CONTINUED

“Education program or activity” means locations, events, or circumstances over which the HIDOE exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

HIDOE

- All activities that occur on a HIDOE school campus or HIDOE office.
- All activities that occur within a HIDOE sponsored activity.
- All activities that occur off-campus within the context of a HIDOE activity and/or event.
- Activities that occur over a HIDOE network and/or HIDOE device, e.g., HIDOE issued laptop, desktop, tablet, cell phone, television, class website/social media account.


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### TIMEFRAME

- The grievance process shall be completed within 90 calendar days.
- The timeframe can be temporarily delayed, or extended for good cause with written notice to the complainant and respondent of the delay or extension and the reason for the action.
- Reasons for good cause include:
  - ✓ The absence of a party, a party's advisor, or witness;
  - ✓ Concurrent law enforcement activity; or
  - ✓ The need for language assistance or accommodation of disabilities.
- If the grievance process is temporarily delayed, or extended for good cause beyond the 90 calendar day timeframe, must provide written notice to the parties.



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### REPORTS OF SEXUAL HARASSMENT

Any individual may make a report of sexual harassment.

Methods of reporting include communication via:

- In-person
- E-mail
- Mail
- Telephone

Reports may be made directly to the Title IX Coordinator or any school employee, including school administrators, faculty, and staff.



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### RESPONSE TO SEXUAL HARASSMENT

- When the HIDEOE has "actual knowledge" of the sexually harassing conduct, the HIDEOE cannot respond in a manner that is deliberately indifferent.

Deliberate indifference = Response to sexual harassment is clearly unreasonable in light of the known circumstances.

- Our response to complaints of sexual harassment must treat complainants and respondents equitably.
  - Offer complainants supportive measures.
  - Follow a grievance process that complies with the interim procedures prior to imposing any sanctions on the respondent.



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### RESPONSE TO SEXUAL HARASSMENT

Upon receipt of the report, the following steps must be taken:

1. The complainant must be contacted to discuss supportive measures;
2. The complainant must be informed of the availability of supportive measures with or without filing a formal complaint; and
3. The process for submitting a formal complaint must be explained to the complainant.



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### EQUITABLE TREATMENT OF PARTIES

- Treatment of the complainant or a respondent in response to a formal complaint of sexual harassment may constitute sexual discrimination under these grievance procedures.
- During the grievance process, both the complainant and respondent must be treated equitably.
  - Provide remedies to the complainant where a determination of responsibility for sexual harassment has been made against the respondent.
  - Must follow the procedures in the grievance process prior to the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.



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### FORMAL COMPLAINT

- At the time the formal complaint is submitted, the complainant must be participating in or attempting to participate in an educational program or activity.
- There are no time constraints as to when a complainant may submit a formal complaint.
- Alternatively, the Title IX Coordinator may submit the formal complaint.



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### FORMAL COMPLAINT: WRITTEN NOTICE OF ALLEGATIONS

Upon receipt of a formal complaint, both parties must be sent a written notice of allegations. The written notice of allegations must include the following information:

- Notice of the grievance process;
- Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
  - The identification of the parties involved in the incident, if known;
  - The conduct allegedly constituting sexual harassment, if known; and
  - The date and location of the alleged conduct, if known;

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### WRITTEN NOTICE OF ALLEGATIONS CONT.

- A statement that the respondent is presumed not responsible for the alleged conduct, and that a determination regarding responsibility will be made at the conclusion of the grievance process;
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
- That parties may inspect and review the evidence;
- Information about available informal resolution processes, if any; and
- Inform parties of any policy that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

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### FORMAL COMPLAINT

Formal complaints or specific allegations will be dismissed for the following reasons:

- The conduct alleged does not meet the definition of sexual harassment, as defined in the Title IX regulations;
- At the time the alleged conduct occurred, the complainant was not participating in or attempting to participate in an educational program or activity;
- The conduct did not occur in the context of an educational program or activity; or
- The conduct did not occur against a person in the United States.

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### WRITTEN NOTICE OF DISMISSAL OF FORMAL COMPLAINT

- When a formal complaint or a specific allegation(s) is dismissed, a written notice of dismissal must be simultaneously sent to the parties.
- The notice of dismissal must indicate:
  - That the formal complaint or a specific allegation(s) was dismissed;
  - The basis for the dismissal; and
  - That a party may appeal the decision to dismiss the formal complaint or the specific allegation(s).




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### INVESTIGATION PROCESS

If the formal complaint meets the required criteria, then an investigator will be assigned and the investigation process will be commenced.

If the formal complaint does not meet the required criteria, the report will be referred to the appropriate office for follow-up, if any. This may include investigation of the allegations under other applicable rules and/or policies.




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### ADVISORS

- Both parties have the same opportunities to have others present with them during any grievance proceeding.
- The advisor is of the parties' choice, and may be, but is not required to an attorney.
- The advisor may be present during any meetings or interviews with the parties.
- The HIDEOE cannot limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding.




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### GATHERING EVIDENCE

- The HIDEO has the burden of proof and the burden of gathering evidence.
- Both parties must have equal opportunities to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.




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### GATHERING EVIDENCE

The HIDEO will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, 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, unless the party's voluntary, written consent to do so for the grievance process is obtained.




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### PARTIES' RIGHT TO DISCUSS THE ALLEGATIONS

Parties cannot be restricted from discussing the allegations under investigation or to gather and present relevant evidence.




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**WRITTEN NOTICE OF MEETINGS AND INTERVIEWS**

- Parties must be provided a written notice of the meeting or interview.
- The written notice must include the following information:
  - Date, time, and location of the meeting or interview; and
  - The purpose meeting or interview.
- The written notice of meeting or interview must be sent to the parties with sufficient time for the party to prepare to participate.

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**INSPECTION & REVIEW OF EVIDENCE**

- Once all evidence has been gathered, and before the investigative report is completed, both the complainant and respondent must have an opportunity to inspect and review the evidence that is directly related to the allegations raised in the formal complaint.
- The evidence must be sent to the parties' advisor, if any.
- Parties have ten (10) calendar days to provide a written response to the evidence gathered.
- The evidence may be sent to parties via hard copy or an electronic format.

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**FINAL INVESTIGATION REPORT**

- The investigator will draft a final investigation report that fairly summarizes the relevant evidence.
- At least ten (10) calendar days prior to the determination of responsibility, the investigator must send the parties, and their advisors, if any, a copy of the final investigation report for their review and written response.
- The final investigation report may be sent via hard copy or electronic format.

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**DECISION-MAKING PROCESS:  
WRITTEN RELEVANT QUESTIONS**

- After the final investigation report is sent to the parties, but before reaching a determination regarding responsibility, parties must have the opportunity to submit written relevant questions to any party or witness.
- Each party must be provided the written responses to the questions and allowed additional, limited follow-up questions for each party.
- The decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant.



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**DECISION-MAKING PROCESS:  
WRITTEN RELEVANT QUESTIONS**

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.



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**DECISION-MAKING PROCESS**

- Prior to making a determination of responsibility, an objective evaluation of all relevant evidence will be conducted.
- The decision-making process includes the examination of both inculpatory and exculpatory evidence.
- Any credibility assessments conducted cannot be based on the person’s status as a complainant, respondent, or witness.
- The preponderance of the evidence standard shall be applied when making a determination(s) of responsibility.
- Once a determination of responsibility is made, the decision-maker must simultaneously issue a written determination regarding responsibility to the complainant and the respondent.



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## DECISION-MAKING PROCESS

The written determination must include the following information:

- Identification of the allegations potentially constituting sexual harassment;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the HIDOE's Code of Conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and whether remedies designed to restore or preserve equal access to the HIDOE's education program or activity will be provided by the HIDOE to the complainant; and
- The procedures and permissible bases for the complainant and respondent to appeal.

The determination regarding responsibility is final either on the date the parties are provided with the written determination of the result of the appeal, if an appeal was filed, or if an appeal was not filed, the date on which an appeal would no longer be considered to be timely.



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## APPEAL'S PROCESS

- Both the complainant and the respondent have the right to appeal the following:
  - A determination regarding responsibility; and
  - A dismissal of the formal complaint or any allegation(s).
- An appeal may be made on the following bases:
  - Procedural irregularity that affected the outcome of the matter ;
  - 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
  - The Title IX Coordinator, the investigator(s), and/or the decision-maker(s) had a conflict of interest or bias for or against the complainants or respondents generally or the individual complainant or respondent that affected the outcome.



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## APPEAL'S PROCESS

- Parties have seven (7) calendar days from the date of the written determination to submit a request for an appeal.
  - The request for appeal should be sent to the decision-maker for the appeal.
  - The decision-maker for the appeal will forward the request for appeal to the CRCB.
- If a party submits a request for an appeal, the other party must be notified of the request for an appeal.
- Upon notification of a request for an appeal, the CRCB will send a notice of appeal simultaneously to the parties indicating that an appeal has been submitted.
  - The notice of appeal will include the following information:
    - The identity of the decision-maker for the appeal;
    - Description of the process for the appeal, including the timeframe for submitting written responses in support of or challenging the appeal;
    - Information regarding who, where, and how to submit the parties' written responses; and
    - A copy of the request for an appeal that was received.



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### APPEAL'S PROCESS CONT.

- Both parties have an opportunity to submit written statements in support of or challenging the appeal.
  - Parties have seven (7) calendar days from the date of the notice of appeal to submit their written responses.
  - Parties' written responses are to be sent to the decision-maker for the appeal.
- Upon the end of the seven (7) calendar time frame for parties to submit their written responses, the decision-maker for the appeal has 21 calendar days to review the parties' response, and any other relevant information; and render a decision on the appeal.



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### APPEAL'S PROCESS CONT.

- The decision-maker for the appeal must issue a written decision describing the result of the appeal and the rationale for the result.
- The written decision shall be provided simultaneously to the complainant and the respondent.
- The written decision of the appeal should be sent to the parties by the last day of the timeframe for the decision-maker for the appeal to render a decision.



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### APPEAL'S PROCESS CONT.

Information to be included in the written decision of the appeal includes:

- The determination(s) being appealed;
- The basis for the appeal;
- The decision regarding the appeal; and
- The rationale for the decision for the appeal.

If the appeal is granted, the decision-maker for the appeal will re-consider the evidence and take appropriate action.

If the appeal is denied, the determinations made by the original decision-maker are still effective and considered final.

The decision made by the decision-maker for the appeal is considered final.

The written decision will also include a statement that the decision is final.



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**EMERGENCY REMOVALS**

- A respondent may be removed from the HIDOE’s educational programs or activities on an emergency basis, provided that an individualized risk analysis was conducted.
- The individualized risk analysis must determine that an immediate threat to the physical health or safety of any student or other individual justifies removal.
- The immediate threat must arise out of the allegations that constitute sexual harassment as defined above.

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**EMERGENCY REMOVALS**

If a determination is made that the respondent will be removed:

1. The respondent must be provided notice of the removal; and
2. The respondent must have an opportunity to challenge the decision to be removed from an educational program or activity.

- The respondent will be sent a written notice of the removal.
- The burden is on the respondent to show that the decision for the removal was incorrect.
- The decision regarding the challenge to the removal is considered final.

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**EMERGENCY REMOVALS**

- Whether or not an emergency removal will be implemented should be determined when the formal complaint is first received, as well as at various stages of the Title IX grievance process, as appropriate.
- The emergency removal provision does not modify rights under the Individuals with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or the American with Disabilities Act.

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### ADMINISTRATIVE LEAVE

- The HIDEO has the discretion to place respondents who are employees on administrative leave during the pendency of the grievance process.
- Whether or not such leave is warranted may be determined at any stage of this grievance process.
- The administrative leave provision does not modify rights under Section 504 of the Rehabilitation Act of 1973 or the American with Disabilities Act.



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### CONFLICT OF INTEREST & BIAS

The Title IX Coordinator, the investigator(s), and the decision-maker(s) cannot have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.



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### STANDARD OF PROOF & PRESUMPTION OF RESPONSIBILITY

#### Standard of Proof

- The standard of proof for determining responsibility is the Preponderance of the Evidence.

#### Presumption of Responsibility

- There is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.



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### POSSIBLE SANCTIONS - EMPLOYEES

- Verbal warning
- Written reprimand
- Suspension
- Termination



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### POSSIBLE SANCTIONS - STUDENTS

- Correction and conference with student
- Detention
- Crisis removal
- Individualized instruction related to student's problem behaviors
- In-school suspension
- Interim alternate education setting
- Loss of privileges
- Parent conferences
- Time in office
- Suspension of one to ten school days
- Suspension of eleven or more school days
- Saturday school
- Disciplinary transfer
- Referral to alternative education programs
- Dismissal
- Restitution



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### POSSIBLE REMEDIES

- Adjustment of academic schedules and coursework
- Provision of academic support services
- Provision of medical support services
- Provision of psychological support services



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### RETALIATION

- No employee of the HIDOE will intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under this grievance procedure.
- Intimidation, threats, coercion, or discrimination, including charges against an individual for Code of Conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.
- Complaints alleging retaliation may be filed according to the same grievance procedures as that for complaints of sexual harassment.



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### RECORD KEEPING REQUIREMENTS

Records of reports and complaints of sexual harassment must be kept for at least seven (7) years. Such records include:

- Each sexual harassment investigation, including any determinations regarding responsibility;
- Disciplinary sanctions imposed on the respondent;
- Remedies provided to the complainant designed to restore or preserve equal access to the HIDOE's education program or activity;
- Any appeal, including the result of the appeal; and
- All materials used to train Title IX Coordinators, investigators, decision-makers. The HIDOE must also make these training materials publically available on its website.



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### RECORD KEEPING REQUIREMENTS

Records of the HIDOE's response to sexual harassment must also be kept for at least seven (7) years. These include records of any actions, including:

- Immediate interventions that were taken in response to a report or formal complaint of sexual harassment. If immediate interventions were not provided, documentation of why such a response was not unreasonably in light of the known circumstances;
- Documentation for each report received, and for each instance, the basis for its conclusion that the HIDOE's response was not deliberately indifferent; and
- Documentation of the measures that were taken to restore and/or preserve access to the HIDOE's educational programs or activities



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### TRAINING REQUIREMENTS

The Title IX Coordinator, investigators, and decision-makers must undergo training on the following topics:

- The definition of sexual harassment;
- The scope of the HIDOE's educational programs and activities;
- How to conduct investigations and the grievance process;
- The appeals process;
- The informal resolution process, if any;
- How to serve impartially, including by avoiding pre-judgement of the facts at issues;
- Conflicts of interests; and
- Bias.




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### TRAINING REQUIREMENTS

- Decision-makers must undergo additional training regarding issues of relevance of questions and evidence, and when questions about a complainant's sexual predisposition or prior sexual behavior are not relevant.
- Investigators must undergo additional training regarding issues of relevance to create a final investigation report that "fairly summarizes" the relevant evidence.
- All employees must be trained on the definition of actual knowledge and sexual harassment, as well as reporting requirements in the HIDOE.
- Any materials used to train the Title IX Coordinator, investigators, and decision-makers, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.




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### REMINDERS:

- A complainant cannot choose which process they would like to follow, e.g. choose to follow Chapter 19 instead of the interim grievance procedures for sexual harassment.
- If a complaint wants the alleged conduct to be addressed/investigated, a formal complaint must be submitted.
- If the criteria for a formal complaint is satisfied, the process in the interim grievance procedures for sexual harassment must be followed.
- If the formal complaint is dismissed, then other applicable HIDOE rules/policies may be used to address the allegations.




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