

POLICY SERVICES

ADVISORY

Volume 32, Number 3

August 2020

Policy Advisory No. 677Policy ACA — Sexual Harassment Regulation ACA-R

Policy Advisory No. 678 NEW..... Policy ACAA — Title IX Sexual Harassment Regulation ACAA-R

CLARIFICATIONS

Policy Alert – Policy BEC – Executive Sessions / Open Meetings

SB 1012, which was cited in the Policy Alert for Policy BEC in July 2020 with Policy Advisories 672-676, had an emergency clause to go into effect immediately. SB 1042 goes into effect August 25, 2020 and replaces the language added to A.R.S. 38-431.03 by SB 1012. The language in SB 1042 is as follows:

Discussions or consultations with designated representatives of the public body in order to discuss security plans, procedures, assessments, measures or systems relating to, or having an impact on, the security or safety of buildings, facilities, operations, critical infrastructure information and information technology maintained by the public body. Records, documentation, notes, or other materials made by, or provided to, the representatives pursuant to this paragraph are confidential and exempt from public disclosure under this chapter and 6 title 39, chapter 1.

There is no change to policy language. Governing Boards should be aware of the addition to A.R.S. 38-431.03, identifying the purposes for which a public body may hold an executive session.

Policy Advisory No. 672 Regulation GBGB-R — Staff Personal Security and Safety

Policy Advisory No. 674 NEW..... Regulation JICA-RB — Student Dress

Policy Advisory No. 676 NEW..... Regulation KI-RB — Visitors to Schools

There have been inquiries regarding the discrepancy between Executive Order 2020-51 and the recommended directives added in the regulations regarding face coverings. The Executive Order requires “face coverings, such as face masks or face shields, for all staff and students over the age of five.” Policy Services includes language calling for cloth face coverings to be worn by all persons age 2 and older. This language was decided upon after careful consideration of the guidelines provided by the Centers for Disease Control and Prevention and in direct consultation with the Arizona Department of Health Services.

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Breaks from wearing cloth face coverings may be granted when physical distancing of six (6) feet or more can be maintained.

Policy Advisory No. 673 Policy IHA — Basic Instructional Program

The new legal reference under Policy IHA regarding the Sandra Day O'Connor Civics Celebration Day was erroneously listed as 1-139 rather than 1-319. This typo was corrected in the version of the document released via PolicyBridge.

POLICY MANUAL UPDATES

Add cross reference “ACAA — Title IX Sexual Harassment” to Policy AC – Nondiscrimination/Equal Opportunity and Policy JB – Equal Educational Opportunities.

POLICY ADVISORY DISCUSSION

The following policy advisories are the result of the final rule amending Title IX regulations 34 C.F.R. Part 106, released by the United States Department of Education, Office of Civil Rights, on May 6, 2020.

The effective date of the final rule is August 14, 2020. ASBA recommends that boards consider adopting the Policy Advisories at a single meeting as provided in Policy BGB and that superintendents approve the changes in regulations to accompany the policies. Additionally, it is important that districts implement the following as soon as possible:

1. Designate and train a Title IX Coordinator;
2. Train all employees as to the reporting requirement of Title IX Sexual Harassment;
3. Train all personnel involved in ordinary disciplinary processes as to the prohibition of any disciplinary sanction relative to Title IX Sexual Harassment without a “determination of responsibility” following the Title IX Grievance Process.

Policy Advisory No. 677

Policy ACA — Sexual Harassment Regulation — ACA-R

Changes are made in the existing policy and regulation on Sexual Harassment to clarify that sexual harassment in the workplace is being addressed for the purpose of an employee complaint to the Equal Employment Opportunity Commission. Districts should note that the definition and standard of sexual harassment is different under this circumstance than under Title IX.

NEW Policy Advisory No. 678

Policy ACAA — Title IX Sexual Harassment Regulation — ACAA-R

Title IX is a federal civil rights law that was passed as part of the Education Amendments of 1972. It mandates that 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.

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Prior to the May 6, 2020 rule, Title IX did not refer to sexual harassment. However, the final rule regulations now define sexual harassment and establish detailed procedures for how school districts, subject to Title IX, must respond to allegations of sexual harassment. The conditions of the final rule are narrow in focus, and ASBA Policy Services recommends that member districts retain current policy documents that are related to nondiscrimination and harassment and add the new policy and regulation, ACAA and ACAA-R (Title IX Sexual Harassment), that are specific to the conditions of the final rule regulations.

The new policy documents are intended to guide districts in the appropriate actions to take per the Title IX regulations in response to any notice of sexual harassment or allegations of sexual harassment and in response to a formal complaint being filed. They also inform districts of documentation requirements included in the Title IX regulations, the need for confidentiality, and the prohibition on retaliation. Districts should review the procedures and specify “reasonably prompt timeframes” where necessary.

As directed in the final rule, each district must publish a notice of nondiscrimination on the district website and in any handbooks provided to students, parents, legal guardians, staff, classroom teacher associations, or other organizations associated with the district. Each district must prominently display the contact information for the Title IX Coordinator in a similar manner, as well as its grievance procedures, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the district will respond.

Title IX training is necessary and should be mandatory for all staff members, especially those who are involved in the response and documentation processes. Specific training components were not provided in the final rule but rather left to districts to implement training in response to the conditions prescribed therein.

Finally, the new rule amending Title IX was challenged in court almost immediately upon its release in May, and legal arguments are still taking place. The Department of Education is in receipt of requests to further clarify the rule and to delay the implementation date. Policy Services will update member districts about any clarifications.

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If you have any questions, call Policy Services at (602) 254-1100. Ask for Chris Thomas, General Counsel/Associate Executive Director; Dr. Terry Rowles, Assistant Director; Steve Highlen, Senior Policy Consultant; or David DeCabooter, Policy Consultant/Staff Attorney. Our e-mail addresses are, respectively, [cthomas@azsba.org], [trowles@azsba.org], [shighlen@azsba.org] and [ddecabooter@azsba.org]. You may also fax information to (602) 254-1177.

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SEXUAL HARASSMENT

All individuals associated with this District, including, but not necessarily limited to, the Governing Board, the administration, the staff, and students, are expected to conduct themselves at all times so as to provide an atmosphere free from sexual harassment.

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964.

The Equal Employment Opportunity Commission defines “sexual harassment” as ~~Sexual harassment includes~~ unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when ~~made by a member of the school staff to a student or to another staff member, or when made by a student to another student~~ where:

- A. Submission to such conduct is either explicitly or implicitly made a term or condition of an individual's employment ~~or education~~; or
- B. Submission to or rejection of such conduct is used as a basis for employment ~~or education~~ decisions affecting such individual; or
- C. Such conduct has the purpose or effect of substantially interfering with an individual's ~~educational or~~ work performance, or creating an intimidating, hostile, or offensive work ~~employment or education~~ environment.

Sexual harassment may include, but is not limited to:

- A. Suggestive or obscene letters, notes, invitations, derogatory comments, slurs, jokes, epithets, assault, touching, impeding or blocking movement, leering, gestures, or display of sexually suggestive objects, pictures, or cartoons.
- B. Continuing to express sexual interest after being informed that the interest is unwelcome. (Reciprocal attraction between peers is not considered sexual harassment.)

C. Implying or withholding support for an appointment, promotion, or change of assignment; suggesting that a poor performance report will be prepared; suggesting that probation will be failed; ~~implying or actually withholding grades earned or deserved; or suggesting that a scholarship recommendation or college application will be denied.~~

D. Coercive sexual behavior used to control, influence, or affect the career, salary, and/or work environment of another employee; ~~or engaging in coercive sexual behavior to control, influence, or affect the educational opportunities, grades, and/or learning environment of a student.~~

E. Offering or granting favors or ~~educational or~~ employment benefits, such as ~~grades or~~ promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations, reclassifications, et cetera, in exchange for sexual favors.

Anyone who is subject to sexual harassment, or who knows of the occurrence of such conduct, should inform the compliance officer, as provided in ACA-R.

A substantiated charge against a staff member in the District shall subject such staff member to disciplinary action.

~~A substantiated charge against a student in the District shall subject that student to disciplinary action, which may include suspension or expulsion.~~

All matters involving sexual harassment complaints will remain confidential to the extent possible.

Adopted: date of Manual adoption

LEGAL REF.:

A.R.S.

41-1461 *et seq.*

20 U.S.C. 1681, Education Amendments of 1972, Title IX

20 U.S.C. 1703, Equal Employment Opportunity Act of 1972

42 U.S.C. 2000, Civil Rights Act of 1964 as amended, Title VII

CROSS REF.:

AC - Nondiscrimination/Equal Opportunity

GBA - Equal Employment Opportunity

GCQF - Discipline, Suspension, and Dismissal of Professional Staff
Members

GDQD - Discipline, Suspension, and Dismissal of Support Staff Members

~~IHBA - Special Instructional Programs and Accommodations for
----- Disabled Students~~

~~JB - Equal Educational Opportunities~~

~~JII - Student Concerns, Complaints and Grievances~~

~~JK - Student Discipline~~

~~JKD - Student Suspension~~

KED - Public Concerns/Complaints about Facilities or Services

KFA - Public Conduct on School Property

ACA-R ©

REGULATION

SEXUAL HARASSMENT

Compliance Officer

The Superintendent shall be the compliance officer. Any person who feels unlawfully discriminated against or who has been the victim of unlawful discrimination by an agent or employee of the District or who knows of such discrimination against another person should file a complaint with the Superintendent. If the Superintendent is the one alleged to have unlawfully discriminated, the complaint shall be filed with the President of the Board.

Complaint Procedure

The District is committed to investigating each complaint and to taking appropriate action on all confirmed violations of policy. The Superintendent shall investigate, and document complaints filed pursuant to this regulation as soon as reasonable, within the established timelines. In investigating the complaint, the Superintendent will maintain confidentiality to the extent reasonably possible. The Superintendent shall also investigate incidents of policy violation that are raised by the Governing Board, even though no complaint has been made.

If after the initial investigation the Superintendent has reason to believe that a violation of policy has occurred, the Superintendent shall determine whether or not to hold an administrative hearing and/or to recommend bringing the matter before the Board.

If the person alleged to have violated policy is a teacher or an administrator, the due process provisions of the District's Policy GCQF shall apply, except that the supervising administrator may be assigned to conduct the hearing. In cases of serious misconduct, dismissal or suspension proceedings in accordance with A.R.S. 15-539 *et seq.*, may be initiated.

If the person alleged to have violated policy is a support staff employee, the Superintendent may follow due process and impose discipline under Policy GDQD if the evidence so warrants. The Superintendent also may recommend a suspension without pay, recommend dismissal, or impose other appropriate discipline.

~~If the person alleged to have violated policy is a student, the Superintendent may impose discipline in accordance with Policies JK, JKD and JKE.~~

If the Superintendent's investigation reveals no reasonable cause to believe policy has been violated, the Superintendent shall so inform the complaining party in writing.

Timelines

The complaint must be filed within thirty (30) calendar days after the complaining party knew or should have known that there were grounds for a complaint/grievance.

Once the written complaint has been filed using the forms provided by the District, the Superintendent shall require the immediate supervisor or site administrator to investigate and respond in writing to the complaining party within five (5) working days.

If the immediate supervisor or site administrator does not respond, the Superintendent will have ten (10) additional working days to respond in writing to the complaining party.

If the Superintendent does not respond within the established time, then the complaining party may request in writing that the issue be brought before the Board. The Board will then review the record of the investigation and have thirty (30) days to respond to the complaining party in writing.

ACAA ©

TITLE IX SEXUAL HARASSMENT

Title IX of the Federal Education Amendments Act protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. The District does not discriminate on the basis of sex and is required by Title IX not to discriminate in such a manner. The District adheres to all conditions established by Title IX by recognizing the right of every student who attends school in the District and every employee who works in the District to do so without the fear of sexual harassment.

The District accepts and shall employ the definition of sexual harassment as established by the Title IX regulations. Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- A. An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct;
- B. 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 District's education program or activity; or
- C. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

The District also accepts and shall employ the definition of a complainant as an individual who is alleged to be the victim of conduct that could constitute sexual harassment, and a respondent as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

The District shall designate and authorize an employee as the "Title IX Coordinator" to comply with its responsibilities pertaining to sexual harassment under Title IX. Inquiries about the application of Title IX may be referred to the District's Title IX Coordinator.

Any person may report sex discrimination, including sexual harassment, regardless of whether the person reporting is the person alleged to be the victim of the reported conduct or not. A report may be made in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator. The District shall notify students, parents or legal guardians of students, employees, applicants for employment, and all unions or professional organizations holding collective bargaining or professional agreements with the District, of the name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator.

The District will respond promptly when any school employee has notice of sexual harassment. Upon receipt of notice of sexual harassment, the District shall notify students, parents or legal guardians of students, employees, applicants for employment, and all unions or professional organizations holding collective bargaining or professional agreements with the District, of the District’s grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the District shall respond. The District is committed to investigating each formal complaint submitted and to taking appropriate action on all confirmed violations of policy. The District shall follow grievance procedures that provide for the prompt and equitable resolution of complaints from students and employees alleging sexual harassment.

The District shall, to the extent reasonably feasible, keep confidential the identity of any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as is necessary to carry out the grievance process and as may otherwise be permitted by law.

Title IX sexual harassment complaints may include violations covered by Arizona’s mandatory reporting statute, A.R.S. §13-3620. Any abuses classified by statute as “reportable offenses” must be reported as such to the authorities because not reporting a reportable offense is classified as a Class 6 Felony.

Retaliation Prohibited

Neither the District nor any person may 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 in good faith made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. Intimidation, threats, coercion, or discrimination, including charges against an individual for 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, constitutes retaliation.

Adopted:

LEGAL REF.:

A.R.S.

§13-3620

20 U.S.C. 1092

20 U.S.C. 1681, Education Amendments of 1972, Title IX

34 U.S.C. 12291

CROSS REF.:

AC – Nondiscrimination / Equal Opportunity

JB – Equal Educational Opportunities

ACAA-R ©

REGULATION

TITLE IX SEXUAL HARASSMENT

Title IX Coordinator

The Superintendent shall appoint an employee as the “Title IX Coordinator.” If the Title IX Coordinator is the respondent, the complaint shall be filed with the Superintendent.

Title IX Coordinator:

<u>Name/Title:</u>
<u>Address:</u>
<u>E-mail:</u>
<u>Telephone:</u>

Response to Sexual Harassment

When the District has actual knowledge of sexual harassment in an education program or activity of the District against a person in the United States, it shall respond promptly in a manner that is not deliberately indifferent.

- A. “Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to a District’s Title IX Coordinator or to any employee.
- B. An “education program or activity” includes locations, events, or circumstances over which the District exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the District.
- C. A District is “deliberately indifferent” only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

The District’s initial response to any report of sexual harassment must treat complainants and respondents equally by offering supportive measures to both and must follow the established grievance process before disciplining a respondent.

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Even if no formal complaint has been filed, the Title IX Coordinator shall promptly:

- A. Contact the complainant to discuss the availability of supportive measures;
- B. Consider the complainant's wishes with respect to supportive measures;
- C. Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
- D. Explain to the complainant the process for filing a formal complaint.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, and other similar measures. The District shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

The District may remove a respondent from the District's education program or activity on an emergency basis, provided that the District undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

Response to a Formal Complaint

“Formal complaint” means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the District 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 District with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed above, and by any additional method designated by the District that results in the Title IX Coordinator receiving the complaint.

The District may place a non-student employee respondent on administrative leave during the pendency of a grievance process in response to a formal complaint. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

For the purpose of addressing formal complaints of sexual harassment, this grievance process shall comply with the following basic elements:

- A. Provide written notice to all parties upon receipt of complaint, which must include:
 1. Notice of the District’s formal grievance process, including any informal resolution process;
 2. Notice of the allegations, including sufficient details to allow respondent to prepare a response (such as the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident);
 3. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;

4. Notice that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence; and
 5. Notice of any provision in the District's code of conduct that prohibits knowingly making false statements or providing false information in the grievance process.
- B. Treat complainants and respondents equitably;
 - C. Require an objective evaluation of all relevant evidence;
 - D. Require that the Title IX Coordinator, investigator, decision-maker, or any person designated by the District to facilitate an informal resolution process, be properly trained and not have a conflict of interest against complainants and respondents generally or against the particular complainant and respondent;
 - E. Include a presumption that the respondent is not responsible for the alleged conduct until a determination has been made at the conclusion of the grievance process;
 - F. Include reasonably prompt timeframes for the conclusion of the grievance process;
 - G. Describe or list the possible disciplinary sanctions and remedies that may be implemented following a determination of responsibility;
 - H. State that the District uses a preponderance of evidence standard to determine responsibility;
 - I. Include the procedures and permissible reasons for appeal by a respondent or a complainant;
 - J. Describe the range of supportive measures available to complainants and respondents; and
 - K. Not require, allow, or use evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.

If the conduct alleged in a formal complaint does not meet the Title IX definition of sexual harassment as established in Governing Board policy, did not occur in the District's education program or activity, or did not occur against a person in the United States, then the District shall dismiss the allegations for purposes of Title IX but may still address the allegations in any manner the District deems appropriate under other District policies.

The District may dismiss a formal complaint or any allegations therein, if at any time:

- A. The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- B. The respondent is no longer enrolled or employed by the District; or
- C. Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal of a formal complaint or any allegations therein, the District shall promptly send written notice of the dismissal, including the reasons for the dismissal, simultaneously to the parties.

When investigating a formal complaint and throughout the grievance process, the District shall:

- A. Ensure that the burden of proof and the burden of gathering evidence rests on the District and not on the parties, except that certain treatment records cannot be obtained without voluntary, written consent of a party;
- B. Provide an equal opportunity for the parties to present witnesses and evidence;
- C. Not restrict the ability of either party to discuss the allegations or to gather and present evidence;
- D. Provide the parties with the same opportunities to have others present during any meeting or grievance proceeding;

- E. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of any meeting or grievance proceeding, with sufficient time for the party to prepare to participate;
- F. Provide both parties an equal opportunity to inspect and review any evidence so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation (prior to completion of the investigative report, the investigator will send to each party and the party's advisor, if any, a copy of all evidence gathered during the investigation and will allow the parties at least ten (10) days to submit a written response to any of the evidence); and
- G. Create an investigative report that fairly summarizes relevant evidence and, at least ten (10) days prior to a determination of responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or hard copy, for their review and written response.

After the District has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) shall afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence are offered to prove consent.

The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), shall apply the District's established standard of evidence and shall issue a written determination regarding responsibility that includes:

- A. Identification of the allegations potentially constituting sexual harassment;

- B. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- C. Findings of fact supporting the determination;
- D. Conclusions regarding the application of the District's code of conduct to the facts;
- E. A statement of and rationale for the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the District imposes on the respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity shall be provided by the District to the complainant; and
- F. The District's procedures and permissible bases for the complainant and respondent to appeal.

The District shall provide the written determination to the parties simultaneously. The Title IX Coordinator is responsible for effective implementation of any remedies.

The District shall offer both parties the right to appeal from a determination regarding responsibility and from a dismissal of a formal complaint or any allegations therein, on the following bases:

- A. Procedural irregularity that affected the outcome of the matter;
- B. 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
- C. The Title IX Coordinator, investigator(s), or decision-makers(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affect the outcome of the matter.

As to all appeals, the District shall:

- A. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- B. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- C. Ensure that the decision-maker(s) for the appeal does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;
- D. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- E. Issue a written decision describing the result of the appeal and the rational for the result; and
- F. Provide the written decision simultaneously to both parties.

The District may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment. Similarly, the District may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility during a formal complaint process, the District may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the District:

- A. Provides to the parties a written notice disclosing:
 - 1. The allegations;
 - 2. The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and

3. Any consequences resulting from participating in the informal resolution process, including the records that shall be maintained or could be shared;
- B. Obtains the parties' voluntary, written consent to the informal resolution process; and
- C. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

The District shall maintain for a period of seven (7) years records of:

- A. Each sexual harassment investigation including:
 1. Any determination regarding responsibility;
 2. Any disciplinary sanctions imposed on the respondent; and
 3. Any remedies provided to the complainant designed to restore or preserve equal access to the District's education program or activity.
- B. Any appeal and the result therefrom;
- C. Any informal resolution and the result therefrom; and
- D. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The District shall make these training materials publicly available on its website, or if the District does not maintain a website the District shall make these materials available upon request for inspection by members of the public.

The District shall create and maintain for a period of seven (7) years, records of any actions, including supportive measures taken in response to a report or formal complaint of sexual harassment. In each instance, the District shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the District's education program or activity. If a District does not provide a complainant with supportive measures, then the District shall document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken.