

TITLE IX PROCEDURES 0110.25-R

I. OVERVIEW

These procedures are limited to addressing complaints of sex discrimination, including sexual harassment, that fall within the scope of Title IX which, among other things, has a specific definition of sexual harassment and applies only to sex discrimination occurring against a person in the United States. These procedures shall supercede any previously adopted procedures to the extent such procedures conflict with those outlined herein.

Other District policies, regulations and documents address sex-based misconduct and may have different definitions, standards of review, and grievance procedures. These documents must be read in conjunction with these procedures, as they may cover incidents of sex-based misconduct not addressed by Title IX.

A. Sex Discrimination Including Sexual Harassment Under Title IX

Title IX prohibits various types of sex discrimination including, but not limited to: sexual harassment; the failure to provide equal athletic opportunity; sex-based discrimination in a District's science, technology, engineering, and math courses and programs; and discrimination based on pregnancy.

Under Title IX, sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- 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;
- 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;
- Sexual assault, dating violence, domestic violence or stalking as defined by Title IX's implementing regulations, at 34 C.F.R. § 106.30.

B. Other Definitions

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

"Days" means calendar days.

"Formal complaint" means a written document, filed and signed by a complainant or a student complainant's parent or legal guardian, or signed by the Title IX Coordinator, that alleges sexual harassment against a respondent and requests that the District investigate the allegation of sexual harassment.

“Report” means any oral or written report of sex discrimination, including sexual harassment, made by any individual to the District’s Title IX Coordinator, that does not qualify as a formal complaint.

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

“Supportive measures” means non-disciplinary, non-punitive individualized services offered without charge to the complainant or respondent following a report of sex discrimination. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas, and other similar measures.

C. Title IX Coordinator

The District has designated one or more individuals to serve as Title IX Coordinator and coordinate the District’s efforts to comply with its responsibilities under Title IX. The name and contact information for the District’s current Title IX Coordinator(s) can be found at: <https://www.rondout.k12.ny.us/cms/One.aspx?portalId=719450&pageId=70345487>.

The District’s Title IX Coordinator may also be contacted at:

Rondout Valley Title IX Coordinator
PO Box 9
Accord, NY 12404
845-687-2400
TitleIXCoordinator@rondout.k12.ny.us

II. REPORTING SEX DISCRIMINATION/SEXUAL HARASSMENT

A. Making a Report or Filing a Formal Complaint

Any person may report sex discrimination, including sexual harassment, at any time and through any means, including in person, by mail, telephone or email, to the District’s Title IX Coordinator.

All District employees who witness or receive an oral or written report of sex discrimination must immediately inform the Title IX Coordinator. Failure to immediately inform the Title IX Coordinator may subject the employee to discipline up to and including termination. In addition to complying with this policy, District employees must comply with any other applicable District policy, procedure, collective bargaining agreement, or other document such as the District’s Code of Conduct.

Individuals who believe they have been subjected to sexual harassment in violation of Title IX may also file a formal complaint with the Title IX Coordinator. The formal complaint form may be obtained from the District's Title IX Coordinator or found on the District's website.

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an education program or activity of the District, including employment. Formal complaints are written complaints that describe the incident(s) of sexual harassment and request the District investigate the allegations under its grievance procedures. Complaints must be signed (including through electronic means, such as email signatures) by the complainant, a parent or legal guardian who has the right to act on behalf of the complainant, or by the District's Title IX Coordinator.

B. Response to Reports of Sex Discrimination Other than Sexual Harassment

The District will provide for the prompt and equitable resolution of reports of sex discrimination other than sexual harassment. In responding to these reports, the Title IX Coordinator will utilize the process set forth in the District Policy pertaining to reports of discrimination by a student or employee, as applicable, and/or any other applicable District policy, procedure, collective bargaining agreement, or other document such as the District's Code of Conduct.

C. Response to Reports of Sexual Harassment

Upon receipt of a report of sexual harassment, the District's Title IX Coordinator will promptly contact the complainant to inform the complainant that supportive measures are available with or without the filing of a formal complaint and to discuss the complainant's wishes with respect to supportive measures. The Title IX Coordinator will additionally explain the process of filing a formal complaint.

No disciplinary sanctions or actions that are not supportive measures will be imposed against a respondent under the District Policy pertaining to these procedures and these procedures without the filing of a formal complaint and without following the formal complaint grievance process outlined below. However, nothing in these procedures shall preclude action under another applicable District policy, procedure, collective bargaining agreement, or other document such as the District's Code of Conduct.

D. Response to Formal Complaints of Sexual Harassment

The Formal Complaint Grievance Process, outlined below, will apply to any formal complaint of sexual harassment under Title IX.

E. Emergency Removal and Administrative Leave

Nothing in these procedures shall preclude the District from removing a respondent from the District's programs or activities on an emergency basis where the district determines that, after an individualized assessment, the immediate threat to the physical health or safety of any student

or individual justifies such removal. A respondent shall be given notice and an opportunity to challenge the decision immediate after the removal. Additionally, nothing in these procedures shall preclude the District from placing an employee on administrative leave during the pendency of the grievance process. Any such actions shall be taken in accordance with all applicable District policies and collective bargaining agreements and employee and student rights under state and federal law.

F. Confidentiality

Except where disclosure may be permitted or required by law or regulation, including but not limited to the Family Educational Rights and Privacy Act, or to carry out the purposes of this policy, the District will keep confidential the identity of any:

- Individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment;
- Complainant;
- Individual who has been reported or alleged to be the perpetrator of sex discrimination, including any respondent; and
- Witness.

G. Record Keeping

The District is required by law to maintain, for a period of seven years, records of any sexual harassment investigation, including any determination of responsibility, sanctions and remedies; any appeal and the result of such appeal; any informal resolution process and the result of such process; and any material used to train Title IX Coordinators, investigators, decision-makers and any person facilitating informal resolutions.

The District must also create and maintain, for a period of seven years, records of the District's response to any report or formal complaint of sexual harassment, including any supportive measures provided. In each instance, the District must 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 must 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.

Records relating to reports and formal complaints of sex discrimination, including sexual harassment, and related investigations, will be kept in a secure, confidential location. All materials used to train Title IX Coordinators, investigators, decision-makers and any person facilitating information resolutions will be made publicly available on the District's website.

H. Prohibition of Retaliatory Behavior

The District prohibits retaliation (i.e. intimidation, threats, coercion or discrimination) against any individual for the purpose of interfering with his or her Title IX rights or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under this policy.

Charging an individual with a Code of Conduct or other applicable violation for making a materially false statement in bad faith during a grievance proceeding does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

All complaints alleging retaliation will be handled in a manner consistent with the District's policies and procedures regarding the investigation of discrimination and harassment complaints.

III. GRIEVANCE PROCESS FOR FORMAL COMPLAINTS

A. General Principles

Upon receipt of a formal complaint of sexual harassment, the District will identify an investigator, who may be the Title IX Coordinator, and a decision-maker or panel of decision-makers, who may not include the Title IX Coordinator or investigator. Any investigator(s), decision-maker(s), or individual responsible for facilitating an information resolution must not have a conflict of interest, must be unbiased and impartial and must have received appropriate training.

Respondents are presumed not to be responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. While the parties will have an opportunity to provide relevant information and evidence, and review the evidence collected, it is the District's responsibility to conduct a full and fair investigation, including the gathering of evidence, necessary to make a determination of responsibility. All evidence collected during the investigation will be objectively weighed and credibility determinations will not be based on an individual's status as a complainant, respondent, or witness.

Where a complainant or respondent is a student who is not an eligible student (as defined in Board Policy 5500, Student Records) or is legally incompetent, the District will address all required notices to and obtain all required consents from the student's/individual's parent or legal guardian, or in their absence, the individual acting as a parent or legal guardian.

B. Timeline

The District will complete its investigation, through the issuance of an investigative report to both parties for review, within sixty (60) days, and issue a written decision regarding responsibility within ninety (90) days of receipt of the formal complaint, unless the timeline is delayed or extended for good cause.

Good cause includes, but is not limited to, considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language

assistance or accommodation of disabilities. Whenever the time frame is temporarily delayed or extended, written notice will be provided to all complainants and respondents of the delay or extension and the reasons for the action.

C. Dismissal

The District must investigate all allegations of sexual harassment in a formal complaint under this grievance process unless the formal complaint, or allegations within the complaint, are dismissed.

Formal complaints, or allegations within the complaint, must be dismissed for the following reasons:

- The alleged conduct did not occur in the District’s education programs or activities or did not occur against a person in the United States; or
- The alleged conduct, even if proven, would not constitute sexual harassment as defined by Title IX.

Formal complaints, or allegations within the complaint, may be dismissed for the following reasons:

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

Parties will be notified in writing within 10 days of any decision to dismiss a formal complaint, or some of the allegations within the complaint, along with the reasons for that decision. The dismissal of part of all of a formal complaint’s allegations of sexual harassment under Title IX and these procedures does not preclude action under another applicable District policy, procedure, collective bargaining agreement, or other document such as the District’s Code of Conduct.

D. Notice of Allegations

Within 10 days of receipt of a formal complaint not subject to dismissal, the District will provide written notice to identified complainants and respondents of:

- The allegations being investigated including, to the extent known:
 - The identities of the parties involved in the incident
 - A description of the conduct alleged to constitute sexual harassment; and
 - The date and location of the alleged incident;

- The applicable grievance procedures, including the availability of an informal resolution process; and
- The rights and responsibilities of complainants and respondents under these procedures, including:
 - That the respondent is presumed not responsible for the alleged conduct;
 - That a determination regarding responsibility is made at the conclusion of the grievance process;
 - That parties may have an advisor of their choice who may be, but is not required to be, an attorney
 - Notice of any District policies and or provision in the District’s Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, during the course of an investigation, the District decides to investigate any additional allegations, the District will provide written notice of those additional allegations to all known parties.

E. Supportive Measures

Following receipt of a formal complaint, the District’s Title IX Coordinator will inform the complainant that supportive measures are available and discuss the complainant’s wishes with respect to such measures. Where appropriate, supportive measures may also be provided to a respondent.

F. Advisors

Each party may identify an advisor, including an attorney, of their choice to assist the party throughout the grievance process, including accompanying the party to any meeting or proceeding. Parties who have selected an advisor and wish to have relevant communications sent to their advisor, should promptly inform the Title IX Coordinator, or other investigator, in writing of their advisor’s name and contact information. Once such notice is provided, all documents sent to a party will be also be sent to the party’s advisor.

G. Informal Resolutions

After a formal complaint is filed, but before reaching a determination regarding responsibility, the District may offer and facilitate the use of an informal resolution process, such as mediation, that does not involve a full investigation and adjudication of the formal complaint. The District will not require that parties participate in an informal resolution process.

The District will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student. Further, the District will not require the waiver of the right to an investigation and adjudication of formal complaints of sexual harassment as a

condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right.

If the District offers and facilitates the use of an informal resolution process, it will:

- Provide written notice to all known parties which details:
 - The allegations in the formal complaint;
 - 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;
 - Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and
- Obtain the parties' voluntary, written consent to the informal resolution process.

It is anticipated that most informal resolutions will be completed within thirty (30) days. During any informal resolution process, any investigation and applicable timelines for the grievance process will be suspended.

H. Investigation

The District may consolidate formal complaints by one or more complainants or against one or more respondents where they arise out of the same facts and circumstances. Following notice of the allegations to both parties, the investigator will gather evidence and conduct necessary interviews of the parties and witnesses.

During the investigation, both parties will have an equal opportunity to present evidence and witnesses and have the same opportunity to have others present during any grievance procedure. The ability of either party to discuss the allegations under investigation or to gather and present relevant evidence will not be restricted.

Further, written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, will be provided to any party whose participation is invited or expected with sufficient time for the party to prepare to participate.

The District will not require, allow, rely upon or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege. Further, the District 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 District obtains that party's voluntary, written consent to do so for the grievance process.

I. Review of Evidence and Investigative Report

Prior to completion of the investigative report, the District will send to each party and the party's advisor, if any, the evidence gathered during the investigation that is directly related to the allegations in the formal complaint in an electronic format or a hard copy. The parties will have ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report.

At the end of the investigation, an investigative report will be created that fairly summarizes all relevant evidence. Such report will be sent to each party and the party's advisor, if any, in an electronic format or a hard copy, for their review and written response.

J. Procedures Prior to a Determination Regarding Responsibility

The District will designate an individual decision-maker or a panel of decision-makers to issue a written determination regarding responsibility. A decision-maker can either be a District employee or, where appropriate, a third-party, but cannot be the same individual as either the Title IX Coordinator or the investigator(s).

Prior to a determination regarding responsibility by the decision-maker, each party will have the opportunity to submit a written response to the investigative report and submit questions, and follow up questions, for any party or witness, as follows:

- Each party will have ten (10) days from the date the investigative report is provided to the parties to submit a written response to the report, and to submit any relevant questions that the party wants asked of any other party or witness;
- Any responses to the questions provided by a party or witness will be provided to each party within ten (10) days;
- Parties will then have an additional five (5) days to submit any written follow up questions; and
- Parties will be provided with any responses to their follow up questions within ten (10) days of receiving the questions.

Questions and evidence about a complainant's sexual predisposition or prior sexual behavior will not be considered, unless the questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) will explain to the party proposing the questions any decision to exclude a question as not relevant.

K. Determination Regarding Responsibility

Within ten (10) days of responses to the last submitted questions, or the deadline for submission of questions, if neither party submits such questions, the decision-maker will issue a written determination of responsibility which will be simultaneously provided to all parties, the Title IX Coordinator, and the Superintendent. The determination will be based on the decision-maker's independent review of the facts outlined in the investigative report and any written response, questions and responses to questions submitted by either party.

To reach this determination, the decision-maker(s) will use the preponderance of the evidence standard (i.e., it is more likely than not that the respondent committed the alleged conduct), which is the standard of evidence that will be applied in all formal complaints of sexual harassment under this policy.

The written notice of the determination regarding responsibility will include:

- Identification of the allegations potentially constituting sexual harassment under Title IX;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;
- Findings of fact supporting the determination;
- Conclusions regarding the application of any applicable District policy, procedure, collective bargaining agreement, or other document such as the District'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 the District is imposing on the respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided by the District to the complainant; and
- Notice of the District's procedures and permissible bases for the complainant and respondent to appeal.

L. Appeals

Either party may file an appeal from a determination regarding responsibility or from the District's dismissal of a formal complaint or any of its allegations. Appeals must be submitted in writing to the Title IX Coordinator within ten (10) days of the written notice of the determination regarding responsibility or dismissal of the formal complaint or any of its allegations.

The bases on which a party is seeking an appeal should be specifically stated in the party's written appeal and any appeal must be based on one or more of the following bases:

- A 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; or

- The Title IX Coordinator, investigator, or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Upon receipt of an appeal, the District will:

- Notify the other party in writing that an appeal has been filed and implement appeal procedures equally for both parties;
- Ensure that any decision-maker for the appeal:
 - Is not the same person as any decision-maker that reached the initial determination regarding responsibility or dismissal, investigator, or Title IX Coordinator;
 - Does not have any conflict of interest or bias and has received appropriate training;
- Give all parties five (5) days following receipt of notice of the appeal to submit a written statement in support of, or challenging, the outcome;
- Provide the written decision describing the result of the appeal and basis for the decision simultaneously to the Title IX Coordinator, the Superintendent, and all parties within fourteen (14) days after receiving the parties written statements in support of, or challenging, the outcome.

M. Finality of Determination Regarding Responsibility

The determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the day after the deadline for filing an appeal.

N. Remedies and Sanctions

Where a determination regarding responsibility for sexual harassment has been made against the respondent, remedies will be provided to a complainant and disciplinary sanctions may be imposed on a respondent up to and including termination for employees and suspension or expulsion for students, subject to applicable law, contract rights, and District Policy. Remedies will be designed to restore or preserve equal access to the District's education program or activity. Where applicable, remedies and disciplinary sanctions will be implemented in accordance with applicable laws and regulations, as well as any District policy, procedure, collective bargaining agreement, or other document such as the District's Code of Conduct.

To the extent permissible by applicable law, contract rights, and District Policy, the Title IX Coordinator is responsible for the effective implementation of any remedies and/or disciplinary sanctions. The Title IX Coordinator will work with other individuals as necessary to effectively implement remedies and/or disciplinary sanctions.

Adopted: 3/23/21

