

***ORANGE TEXT REFLECTS FEEDBACK SINCE THE 6/3/21 WORK SESSION.**

PROCEDURES FOR INVESTIGATING STAFF COMPLAINTS OF DISCRIMINATION, HARASSMENT, BULLYING, AND HOSTILE WORK ENVIRONMENT AND UNETHICAL CONDUCT

Alexandria City Public Schools (ACPS) is committed to maintaining a safe, welcoming, and friendly environment that fosters a spirit of mutual trust and respect, and is free from the discrimination, harassment or bullying of employees, students or other members of the school community. Such conduct is offensive, damages morale, undermines the integrity of the educational or employment experience and impairs the productivity and stability of the school division.

Any person who believes a student has been discriminated against, harassed or bullied by anyone on school property or during a school activity should report the complaint according to the procedures in Regulation JB-R/JFHA-R: *Procedures for Investigating Student Complaints of Discrimination, Harassment and Bullying.*

Any employee or candidate for employment who believes they have been discriminated against, harassed, bullied or subjected to a hostile work environment in violation of Policies GB, GBA/JFHA or any applicable state or federal nondiscrimination or harassment law should report the complaint as outlined below.

Student Complaint Reporting Procedures

~~As outlined in Regulation JB-R, any student who believes he/she has been subjected to discrimination, harassment as defined in Policy GBA/JFHA, or bullying should report the alleged conduct to:~~

~~Compliance Officer: Director of Alternative Programs and Equity~~

~~Alternate Compliance Officer: Executive Director of Student Services~~

~~Any student filing such a report should follow the procedures outlined in Policy JB.~~

I. Employee Complaint Reporting Procedures for Discrimination, Bullying, Hostile Work Environment, Unethical Conduct or Harassment Other than Sexual Harassment

The following procedures apply to employee complaints of discrimination, harassment, bullying, unethical conduct or a hostile work environment that do **not** constitute sexual harassment—(Section II of this regulation outlines the sexual harassment grievance process.)

A. File Report

Any person who believes he/she/they has (have) not received equal employment opportunities in accordance with Policy GB or who has been subjected to harassment as defined in Policy GBA/JFHA, bullying, a hostile work environment or unethical conduct as defined in Policy GBA/JFHA should report the alleged behavior or incident as soon as possible to the Title IX Coordinator or to one of the Compliance Officers designated in this regulation. ~~discrimination to one of the following staff members designated by the Superintendent.~~ (If a report is made to the Compliance Officers or another staff member, they will promptly notify the Title IX Coordinator.)

The alleged behavior or incident should be reported as soon as possible, and the report generally should be made within fifteen (15) school days of the occurrence. ("School days" are days when ACPS schools are in session.) Further, any employee who has knowledge of conduct which may constitute prohibited discrimination, harassment or bullying shall report such conduct to the Title IX Coordinator or one of the Compliance Officers listed in this regulation. If the complaint is against the Compliance Officer, the complaint can be made to the Superintendent. Reports received by the Compliance Officer or Superintendent are shared with the Title IX Coordinator, who makes an initial determination whether the allegations may be sexual harassment prohibited by Title IX.

Compliance Officer: ~~Chief Human~~Executive Director of Human Resources Officer
Alternate Compliance Officer: Director of Employee Engagement and Relations

Title IX Coordinator
Executive Director of Equity & Alternative Programs
Alexandria City Public Schools
1340 Braddock Place
Alexandria, VA 22314
703-619-8165
titleixcoordinator@acps.k12.va.us

The Compliance Officer may be contacted at:

Executive Director of Human Resources
Alexandria City Public Schools
1340 Braddock Place, Alexandria, VA 22314
703-619-8010
staff.compofficer@acps.k12.va.us

The Alternate Compliance Officer may be contacted at::

Director of Employee Engagement and Relations
Alexandria City Public Schools

[1340 Braddock Place, Alexandria, VA 22314](https://www.acps.k12.va.us)
[703-619-8169](https://www.acps.k12.va.us)
timothy.carson@acps.k12.va.us
staff.compofficer@acps.k12.va.us

~~Any employee who has knowledge of conduct which may constitute prohibited discrimination or harassment shall report such conduct to one of the compliance officers listed above. If the complaint is against the Compliance Officer the complaint can be made to the Alternate Compliance Officer.~~

The ~~reporting party~~ person making the report should use form GB-F/GBA-F/JFHA-F, posted on the ACPS website, to make complaints of discrimination, harassment, bullying, a hostile work environment or unethical conduct. However, oral reports and other written reports ~~will be~~ are also ~~be~~ accepted. ~~The complaint must be filed with one of the compliance officers above. Any complaint that involves the Compliance Officer shall be reported to the Superintendent.~~

The complaint, ~~and the~~ identity of the ~~complainant and the~~ person allegedly subjected to the prohibited conduct and the person or persons allegedly responsible for the ~~discrimination, harassment, bullying, hostile work environment or unethical~~ conduct will be disclosed only to the extent necessary to fully investigate the complaint and only when such disclosure is required or permitted by law. Additionally, a person who has allegedly been discriminated against, harassed, bullied or subjected to a hostile work environment or unethical conduct and who wishes to remain anonymous is advised that such confidentiality may limit ACPS' ability to fully respond to the complaint. ~~ACPS cannot guarantee the anonymity of the complainant if it will interfere with its ability to fully investigate the complaint.~~

~~For cases regarding a hostile work environment or unethical conduct,~~ Anonymous reports may be made to the Compliance Officer through the Department of Human Resources:

Human Resources – Compliance Officer

Alexandria City Public Schools
1340 Braddock Place, 5th Floor
Alexandria, VA 22314
Phone: 703-619-8010
staff.compofficer@acps.k12.va.us

In such cases, the Compliance Officer shall review the complaint and determine if an investigation is warranted and, if so, issue a written report to the Superintendent upon completion of the investigation. In addition, the Compliance Officer will submit a report of all anonymous complaints received to the Superintendent annually.

After receiving a complaint, the Title IX Coordinator makes an initial determination whether the allegations may be sexual harassment. If they may be, the Grievance Process in Section II of this regulation is followed. If the allegations do not constitute sexual harassment, then the complaint is referred to the Compliance Officer, who follows the procedures below.

The Title IX Coordinator, in conjunction with the Compliance Officer, also determines whether the alleged conduct may also constitute criminal conduct and ensures that law enforcement officials are notified if necessary.

If the alleged conduct may also constitute child abuse, it is reported to the Department of Social Services in accordance with Policy GAE: Child Abuse and Neglect Reporting.

B. Investigation by Compliance Officer

1. Generally

The Compliance Officer:

- Receives complaints of discrimination, harassment, bullying, a hostile work environment or unethical conduct referred by the Title IX Coordinator;
- Conducts or oversees the investigation of the alleged conduct referred by the Title IX Coordinator;
- Assesses the training needs of the school division in connection with complaints referred by the Title IX Coordinator;
- Arranges necessary training; and
- Ensures that any investigation is conducted by an impartial investigator who is trained in the requirements of equal employment/education opportunity and has the authority to protect the alleged victim and others during the investigation.

2. Compliance Officer Formal Procedure

Upon ~~receipt of receiving~~ a written, attributed (not anonymous) ~~report-complaint~~ of alleged discrimination, harassment, bullying, a hostile work environment or unethical conduct from the Title IX Coordinator, the Compliance Officer ~~shall~~ immediately authorizes or undertakes an investigation. The investigation may be conducted by school personnel or a third party designated by the Compliance Officer. The investigation shall be completed as soon as practicable, which generally should not be later than 14 ~~business-school~~ days after ~~receipt of the report-referral of the complaint to~~ by the Compliance Officer. Upon receiving the complaint, the Compliance Officer will acknowledge receipt of the complaint by giving written notice that the complaint has been received to both the ~~complainant and the Superintendent~~ person complaining of reporting the alleged, prohibited conduct harassment and the person allegedly responsible for it. ceased

~~of harassment. Also~~ Upon receiving the complaint, the Compliance Officer ~~also~~ shall determine whether interim measures should be taken pending the outcome of the investigation. Such interim measures may include, but are not limited to, e.g., separating the alleged harasser and the person allegedly harassed. If the Compliance Officer determines that more than 14 ~~business school~~ days will be required to investigate the complaint, the ~~person allegedly harassed and the alleged harasser complainant and the Superintendent~~ allegedly discriminated against, harassed, bullied, or subjected to the hostile work environment or unethical conduct and the person(s) allegedly responsible for the prohibited conduct will be notified of the reason for the extended investigation and the date by which the investigation will be concluded.

The investigation may consist of personal interviews with the ~~person allegedly subjected to the conduct~~ complainant, the person(s) alleged to have engaged in the prohibited conduct or ~~harassed or otherwise~~ violated the ~~Policies GB or GBA/JFHA~~ policy, and any others who may have knowledge of the ~~alleged discrimination, harassment, bullying, hostile work environment or unethical conduct, or the~~ circumstances giving rise to the complaint. ~~The investigation will consider witnesses and evidence from both the person allegedly subjected to the conduct and the person(s) allegedly responsible for the prohibited conduct. alleged harasser and the person allegedly harassed.~~ The investigation may also consist of the inspection of any other documents or information deemed relevant by the investigator. ACPS shall take necessary steps to protect the person allegedly subjected to the conduct and others pending the completion of the investigation.

In determining whether alleged conduct constitutes a violation of this policy, ACPS considers, at a minimum: (1) the surrounding circumstances; (2) the nature of the behavior; (3) past incidents or past or continuing patterns of behavior; (4) the relationship between the parties; (5) how often the conduct occurred; (6) the identity of the alleged perpetrator in relation to the alleged victim (i.e. whether the alleged perpetrator was in a position of power over the alleged victim); (7) the location of the alleged harassment; (8) the ages of the parties and (9) the context in which the alleged incident(s) occurred. Whether a particular action or incident constitutes a violation of this policy requires a case by case determination based on all of the facts and circumstances revealed after a complete investigation.

C. Decision of Compliance Officer's Report

The Compliance Officer ~~shall~~ issues a written ~~decision to the complainant and report to the~~ Superintendent upon completion of the investigation. If the complaint ~~alleges involves~~ the Superintendent ~~has violated this policy~~, then the ~~decision report shall be~~ is sent to the School Board. The ~~decision report shall~~ includes a determination of whether the allegations are substantiated, whether Policy GB or GBA/JFHA ~~was~~ violated and recommendations for corrective

action, if any.

All employees ~~must~~shall cooperate with any investigation of alleged discrimination, ~~or harassment, bullying, unethical conduct or a hostile work environment~~ conducted under this ~~policy~~regulation or by an appropriate state or federal agency.

D. Action by ~~Decision~~ of Superintendent or Designee

Within 5 school days of receiving the Compliance Officer's report, the Superintendent or designee shall issues a decision regarding whether Policies GB ory GBA/JFHA werewas violated. (Circumstances may support the Superintendent's reasonable extension beyond five school days for good cause.) This decision must be provided in writing to the person allegedly ~~h~~person-subjected to the conduct and the person allegedly responsible for the prohibited conduct~~arassed and the alleged harasser~~. If the Superintendent or designee determines that it is more likely than not that prohibited conduct~~harassment~~ occurred, the-ACPS will school-division shall take prompt, appropriate action to address and remedy the violation as well as prevent any recurrence. Such action may include discipline up to and including dismissal~~expulsion or discharge~~. Whether or not the Superintendent or designee determines the~~that~~ prohibited conduct~~harassment~~ occurred, the Superintendent or designee may determine that schoolwide or Divisionwide training be conducted or that the person allegedly subjected to the prohibited conduct receives counseling.

For complaints regarding bullying, a hostile work environment or unethical conduct against employees other than the Superintendent or School Board members, the ~~Compliance Officer's~~Superintendent's decision is final. For such complaints against the Superintendent or Board Members, the decision of the School Board is final.

If the complaint alleges that the Superintendent has violated Policies GB, GBA/JFHA or this regulation, the School Board appoints a committee of three (3) School Board Members at its next Board meeting to investigate the matter. The committee shall make the decision and determine what action should be taken. The committee issues a written decision within 14 calendar days of the time the Board receives the Compliance Officer's report, or the committee is appointed. The committee may also determine that additional information and/or an extension of the time for a decision are required. If such determination is made, the committee will notify the complainant and Superintendent in writing.

The written decision must be mailed to or personally delivered to the complainant within five calendar days of the issuance of the decision by the committee. If the Superintendent, Superintendent's designee or committee concludes that prohibited discrimination occurred, ACPS shall take prompt, appropriate action to address and

remedy the violation as well as prevent any recurrence. Such action may include discipline up to and including dismissal.

E. Appeal to Superintendent

For complaints regarding discrimination and harassment, if the Compliance Officer, Superintendent, or designee or Board committee determines that no prohibited discrimination or harassment occurred, the person who was allegedly subjected to the discrimination or harassment may appeal this the finding to the Superintendent School Board within five (5) school days of receiving the decision. Written notice of appeal must be filed with the Superintendent or with a member of the Board committee which issued the written decision, within 5 calendar days of receiving the Compliance Officer's decision who will shall forward the record to the School Board. The School Board shall make a decision within 30 calendar days of receiving the record. The School Board may ask for oral or written argument from the aggrieved party, the Superintendent, designee, the committee, and any other individual the School Board deems relevant. Written notice of the School Board's decision will be given to both the alleged harasser and the person allegedly discriminated against or harassed, and the person or persons responsible for the alleged conduct.

If the Superintendent or designee determines that prohibited conduct harassment occurred and discipline is imposed, the disciplined person may appeal the disciplinary sanction in the same manner as any other such sanction would be appealed.

Employees may choose to pursue their complaints under this policy through the relevant employee grievance procedure instead of the complaint procedure in this policy.

If the Superintendent receives an appeal, the Compliance Officer will forward to the Superintendent a copy of the investigation report and any other related documents or information used in making the decision that no discrimination occurred. Together the information received from the Compliance Officer and the information received from the appellant make up the complaint file.

Within 14 business days of receiving the complete complaint file, the Superintendent shall issue a written decision regarding (1) whether ACPS policy was violated and (2) what action if any should be taken. The Superintendent may decide the appeal based solely on the complaint file. If the Superintendent determines that more information is needed to reach a decision, the complainant and the Compliance Officer will be notified of the need for additional information. The Superintendent may request the complainant and/or the Compliance Officer to submit additional documentation or written statements within a set period of time. The Superintendent

~~may also request that the complainant meet in person to provide additional information. If the Superintendent determines that more than 14 business days will be required to decide the appeal, the complainant will be notified of the reason for the extension and the date by which a decision will be made.~~

F. ~~Alternative Procedure for Complaints Against Superintendent~~

~~If the complaint alleges that the Superintendent has violated this policy, the School Board shall appoint a committee of School Board Members to investigate the matter. The committee shall make the decision and determine what action should be taken. The committee shall issue a written decision within 30 calendar days of the time the Board committee is appointed. The committee may also determine that additional information and/or an extension of the time for a decision are required. If such determination is made the committee will notify the complainant of this in writing. The written decision must be sent by certified mail or personally delivered to the complainant within five calendar days of the issuance of the decision by the committee.~~

F. ~~Compliance Officer Alternative Informal Procedure~~

~~If the person allegedly subjected to the prohibited conduct and the person accused of the conduct agree, the principal, designee or supervisor of the person allegedly subjected to the conduct may, in lieu of the procedure above, arrange for them to resolve the complaint informally with the help of a counselor, teacher or administrator.~~

~~If the person allegedly subjected to the conduct and the person accused of the prohibited conduct agree to resolve the complaint informally, they shall each be informed that they have the right to abandon the informal procedure at any time in favor of the initiation of the Compliance Officer Formal Procedure discussed above. The principal, or principal's designee or supervisor shall notify notifies the person allegedly subjected to the conduct and the person accused of the conduct in writing when the complaint has been resolved. The written notice shall state whether prohibited harassment occurred.~~

II. Sexual Harassment

ACPS complies with Title VII of the Civil Rights Act, as well as Title IX of the Education Amendments of 1972, which prohibit discrimination on the basis of sex, including sexual harassment and sexual violence (see Policy GBA/JFHA and Policy GB) in all school division educational programs and activities. ACPS not only complies with the letter of Title IX's requirements but also endorses the law's intent and spirit. ACPS is committed to compliance in all areas addressed by Title IX, including but not limited to, access to education, career education, math and science, standardized testing, athletics,

education for pregnant and parenting students, learning environment, technology, as well as preventing and addressing sexual harassment.

ACPS provides educational, preventative and training programs regarding sexual or gender-based harassment and discrimination, encourages reporting incidents, prevents incidents of sexual and gender-based harassment and discrimination from denying or limiting an individual's ability to participate in or benefit from the school division programs, makes timely services available for those who have been affected by discrimination, and provides prompt and equitable methods of investigation and resolution to stop discrimination, remedy any harm, and prevent its recurrence.

Any student, employee, or third party who engages in harassment or discrimination, or retaliates against another person because of reporting harassment or discrimination or participating in an investigation, is subject to immediate discipline, up to and including termination, dismissal, suspension and/or expulsion.

Questions regarding Policies GB, GBA/JFHA or this regulation, including Title IX, may be directed to the Compliance Officers or the ACPS Title IX Coordinator.

Questions regarding Title IX may also be referred to the Office of Civil Rights:

U.S. Department of Education
Assistant Secretary for Civil Rights
400 Maryland Avenue, SW
Washington, D.C. 20202-1328
Telephone: 800-421-3481
TDD: 800-877-8339
Email: OCR@ed.gov

A. Title IX Definitions

“Actual knowledge” means notice of sexual harassment prohibited by Title IX or allegations of sexual harassment prohibited by Title IX to the Title IX Coordinator or any official of the school division who has authority to institute corrective measures or to any employee of an elementary or secondary school.

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

“Formal complaint” means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment prohibited by Title IX against a respondent and requesting that the allegation be investigated. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. When the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party. The allegations in a formal complaint must be

investigated. In response to a formal complaint, the Title IX Grievance Process below is followed.

“**Program or activity**” includes locations, events or circumstances over which the School Board exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

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

“**Supportive measures**” means 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 School Board’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the 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, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security or monitoring of parts of campus, and other similar measures. Any supportive measures provided to the complainant or respondent are maintained as confidential, to the extent that maintaining such confidentiality does not impair the ability to provide supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

B. Grievance Process

1. Generally

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), 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. (If a report is made to another staff member, that staff member then notifies the Title IX Coordinator.) The reporting party may use the Form GB-F/GBA-F, *Report of Harassment*, to make a complaint. Such a report may be made at any time, including 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.

Complainants and respondents are treated equitably by offering supportive measures to a complainant and by following this grievance process before the

imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

The Title IX Coordinator promptly contacts the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain the process for filing a formal complaint.

Applicants for enrollment and employment, students, parents or legal guardians, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the School Board are notified:

- of the name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator; and
- that the School Board does not discriminate on the basis of sex in its education program or activity and that it is required by Title IX not to discriminate in such a manner. The notification states that the requirement not to discriminate extends to admission and employment and that inquiries about the application of Title IX may be referred to the Title IX Coordinator, the Assistant Secretary for Civil Rights of the United States Department of Education, or both.

The School Board prominently displays the contact information for the Title IX Coordinator and Policies GB, GBA/JFHA and this regulation on its website and in each handbook or catalog it makes available to persons listed above who are entitled to notifications.

Nothing herein precludes a respondent from being removed from the School Board's education program or activity on an emergency basis, provided that 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 that the respondent is provided with notice and an opportunity to challenge the decision immediately following the removal.

Nothing in this regulation precludes a non-student employee respondent from being placed on administrative leave during the pendency of a grievance process.

This grievance process treats complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following this process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies are designed to restore or preserve equal access to the School Board's education program or activity.

The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

All relevant evidence is evaluated objectively. Credibility determinations are not based on a person's status as a complainant, respondent, or witness.

Any Title IX Coordinator, investigator, decision-maker, or any person who facilitates an informal resolution process may not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process receives training on the definition of sexual harassment prohibited by Title IX, the scope of the School Board's education program or activity, how to conduct an investigation and grievance process including appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Decision-makers receive training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. Investigators receive training on issues of relevance in order to create investigative reports that fairly summarize relevant evidence.

A finding of responsibility may result in disciplinary action up to and including expulsion for students or dismissal of employees.

The standard of evidence used to determine responsibility is preponderance of the evidence.

This grievance process does not 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 such privilege has waived the privilege.

2. Notice of allegations

On receipt of a formal complaint, the Title IX coordinator gives the following written notice to the parties who are known:

- notice of the grievance process, including any informal resolution process, and
- notice of the allegations of sexual harassment potentially constituting sexual harassment prohibited by Title IX, including sufficient details known at the time and with sufficient time to prepare a response before any initial

interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment prohibited by Title IX, and the date and location of the alleged incident, if known.

The written notice

- includes 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;
- informs the parties that they 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
- informs the parties of any provisions in the School Board's eStudent Code of conduct or the superintendent's Employee Standards of Student Conduct that prohibit knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the investigator decides to investigate allegations about the complainant or respondent that are not included in the notice previously provided, notice of the additional allegations is provided to the parties whose identities are known.

3. Dismissal of formal complaints

A formal complaint or any allegations therein must be dismissed if the conduct alleged in the complaint:

- would not constitute sexual harassment prohibited by Title IX even if proved,
- did not occur in the School Board's education program or activity, or
- did not occur against a person in the United States.

Such a dismissal does not preclude action under another provision of the Student Code of Conduct or the Employee Standards of Conduct.

A formal complaint or any allegations therein may be dismissed if at any time during the investigation:

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

4. Investigation of Formal Complaint

When investigating a formal complaint and throughout the grievance process, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the School Board and not on the parties, provided that a party's records that are made or maintained by a physician, 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 are not accessed, considered, disclosed or otherwise used without the voluntary, written consent of the party's parent, or the party if the party is an eligible student, to do so for this grievance procedure.

The parties have an equal opportunity to present witnesses, including fact and expert witnesses, and other evidence.

The ability of the parties to discuss the allegations under investigation or to gather and present relevant evidence is not restricted.

The parties have the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. The choice or presence of advisor for either the complainant for respondent is not limited in any meeting or grievance proceeding.

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

The investigator provides both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence which will not be relied upon in reaching a determination regarding responsibility and evidence, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to the completion of the investigative report, the investigator must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.

The investigator creates an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the time a determination regarding responsibility is made, sends to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

After the investigator has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker must afford each party the opportunity to submit written, relevant questions that the 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 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) must explain to the party proposing the question any decision to exclude a question as not relevant.

5. Determination Regarding Responsibility

The decision-maker, who cannot be the same person as the Title IX Coordinator or the investigator, must issue a written determination regarding responsibility.

The written determination must include

- 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, and methods used to gather other evidence;
- findings of fact supporting the determination;
- conclusions regarding the application of the Student Code of Conduct or the Employee Standards 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 School Board imposes on the respondent, and whether remedies designed to restore or preserve equal access to the School Board's education program or activity will be provided to the complainant; and
- the procedures and permissible bases for the complainant and respondent to appeal.

The decision-maker must provide the written determination regarding responsibility to the parties simultaneously.

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

The Title IX Coordinator is responsible for effective implementation of any

remedies.

6. Appeals

Either party may appeal from a determination regarding responsibility or from a dismissal of a formal complaint or any allegations therein, 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, investigator, or decision-maker 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.

Notification of appeal must be given in writing to the Title IX Coordinator.

As to all appeals, the Title IX Coordinator

- notifies the other party in writing when an appeal is filed and implements appeal procedures equally for both parties;
- ensures that the decision-maker for the appeal is not the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator; and
- ensures that the decision-maker for the appeal complies with the standards set forth in Title IX and this regulation.

The appeal decision-maker (Superintendent)

- gives both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- reviews the evidence gathered by the investigator, the investigator's report, and the decision-maker's written decision;
- issues a written decision describing the result of the appeal and the rationale for the result; and
- provides the written decision simultaneously to both parties and the Title IX Coordinator.

7. Timelines

The investigative report will be provided to the parties within 35 days from the date the formal complaint is filed.

A decision will be issued within 10 working days from the date the investigative report is submitted to the decision-maker.

Either party may appeal within 5 working days from the date the written determination regarding responsibility is given to the parties.

Any appeal will be resolved with 15 calendar days from the filing of the appeal.

If the parties agree to an informal resolution process, these deadlines are paused from the time one party requests an informal resolution process until either the time the other party responds, if that party does not agree to the informal resolution process, or until either party withdraws from the informal resolution process.

Temporary delays of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action are permitted. Good cause may include, but is not limited to, considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; disciplinary processes required by law or School Board policy; or the need for language assistance or accommodation of disabilities.

8. Informal Resolution Process

At any time during the formal complaint process and prior to reaching a determination regarding responsibility, the parties may participate in an informal resolution process, such as mediation, that does not involve a full investigation and determination of responsibility. When one party requests an informal resolution process, the other party must respond to the request within 3 days. The informal resolution process must be completed within 10 days of the agreement to participate in the process.

The informal resolution process may be facilitated by a trained educational professional, consultant, or other individual selected by the Title IX Coordinator under the following conditions:

- the parties are provided a written notice disclosing the allegations, 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, resume the grievance process with respect to the formal complaint, and be informed of any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- the parties, voluntarily and in writing, consent to the informal resolution process; and
- the informal resolution process cannot be used to resolve allegations that an employee sexually harassed a student.

If the matter is resolved to the satisfaction of the parties, the facilitator shall

document the nature of the complaint and the resolution, have both parties sign the documentation and receive a copy, and forward it to the Title IX Coordinator. If the matter is not resolved, the formal complaint process is resumed.

Parties cannot be required to participate in an informal resolution process.

An informal resolution process is not offered unless a formal complaint is filed.

9. Recordkeeping

The School Board will maintain for a period of seven years records of:

- each investigation of allegations of sexual harassment prohibited by Title IX including any determination regarding responsibility and any audio or audiovisual recording or transcript, if any, required under the Title IX regulations, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to School Board's education program or activity;
- any appeal and the result therefrom;
- any informal resolution and the result therefrom; and
- all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. These materials will also be made available on the ACPS website.

For each response required under 34 C.F.R. § 106.44, the School Board must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment prohibited by Title IX. In each instance, the School Board will 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 its education program or activity. If the School Board does not provide a complainant with supportive measures, then it will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

VI.—Final Decision

~~The decision of the Superintendent, or the Board committee if the complaint is against the Superintendent, is final. If the Superintendent or Board committee concludes that prohibited discrimination occurred, ACPS shall take prompt, appropriate action to address and remedy the violation as well as prevent any recurrence. Such action may include discipline up to and including dismissal.~~

Any mandatory provision of the federal Title IX regulation (34 C.F.R. Part 106) that is not expressly set forth in this Regulation is incorporated by this reference.

Revised: September 14, 2017

[Revised:](#)

Legal Refs.: Americans with Disabilities Act of 1990
 Title VII of the Civil Rights Act of 1964
 Title IX of the Education Amendments of 1972
 Section 504 of the Rehabilitation Act of 1973
 Office of Civil Rights; Sexual Harassment Guidance: Harassment of Students by
 School Employees, Other Students, or Third Parties
 20 U.S.C. §§ 1681-1688
 29 U.S.C. § 621, 794
 42 U.S.C. §§ 2000d-2000d-7
 42 U.S.C. §§2000d-2000d-17
 34 CFR Part 106

Cross Refs.: AC Non-Discrimination
 AD Educational Philosophy
[BCE School Board Committees](#)
[GB Equal Employment Opportunity/Nond-Discrimination in Employment](#)
[GB-F/GBA-F/ Report of Discrimination/Harassment](#)
[JB-F/JFHA-F](#)
[GBA/JFHA Prohibition Against Harassment, Bullying, Hostile Work Environment and Retaliation](#)
[GBM Licensed Staff Grievances](#)
[GBMA Support Staff Grievances](#)
 GCPD Professional Staff Members, Contract Status and Discipline
 GDPD Support Staff Members; Contract Status and Discipline
[JB Equal Education Opportunities/Nond-Discrimination in Education](#)
[JB-R/JFHA-R Procedures for Investigating Student Complaints of Discrimination, Harassment And Bullying](#)
 JFC Student Conduct
 JFC-R Standards of Student Conduct
 JFHA-R Procedures for Complaints of Discrimination
 JHG Child Abuse and Neglect Reporting
 KKA Service Animals in Public Schools