

TITLE IX Sexual Harassment (K-12)

INTAKE & GRIEVANCE PROCESS

Presented by Heather T. Lynn, Esq. & Pietro J. Lynn, Esq.

Sponsored by Vermont School Boards Insurance Trust

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October 2, 2020: (9:00 – 3:00 p.m.)

- I. INTRODUCTION: CONTEXT OF NEW TITLE IX REGULATIONS
- II. DEFINING SEXUAL HARASSMENT / VT AND LAW
- III. PRE GRIEVANCE PROCESS: INTAKE & ASSESSMENT
- IV. GRIEVANCE PROCESS – FORMAL COMPLAINT OF SEXUAL HARASSMENT
- V. GRIEVANCE PROCESS - INVESTIGATION OF SEXUAL HARASSMENT
- VI. GRIEVANCE PROCESS – INITIAL DETERMINATION OF SEXUAL HARASSMENT
- VII. GRIEVANCE PROCESS – APPEAL OF INITIAL DETERMINATION
- VIII. POST GRIEVANCE PROCESS - IMPLEMENTATION-Discipline and “Unreasonably burdensome” measures now permitted.

I. INTRODUCTION: CONTEXT OF NEW TITLE IX REGULATIONS

Discussion of relevant state and federal laws.

Which law and therefore which process applies to sexual “harassment”?

- Prior to the 2020-2021 school year, a Vermont school response in cases of sexual assault or sexual harassment generally – as between students, or between adult and student - was governed by the HHB Procedures, which included the definition of notice, intake, documentation, investigation, and appeals.
- For conduct between adults/employees, sexual harassment had been exclusively addressed through Title VII and Vermont’s Fair Employment Practices Act.

As of August 14, 2020, this has now changed.

Vermont's Public Accommodations Act

- 9 V.S.A. Sec. 4500 et seq. is the state law which prohibits discrimination on the basis of sex, requiring that an operator of a place of public accommodation (such as a school)
 - “shall not, because of race, creed, color, national origin, marital status, **sex**, or gender identity of any person, refuse, withhold from, or deny to that person any of the accommodations, advantages, facilities, and privileges of a place of public accommodation.”

Sexual Harassment in Vermont HHB Policy:

Is defined as

“...unwelcome conduct of a sexual nature, that includes **sexual violence/sexual assault**, sexual advances, requests for sexual favors, and other verbal, written visual or physical conduct of a sexual nature, and includes situations when one or both of the following occur:

- i. Submission to that conduct is made either explicitly or implicitly a term or condition of a student’s education, academic status, or progress; or
- ii. Submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting that student.

Sexual harassment may ALSO include student-on-student conduct or conduct of a non-employee third party that creates a hostile environment. A hostile environment exists where the harassing conduct is severe, persistent or pervasive so as to deny or limit the student’s ability to participate in or benefit from the educational program on the basis of sex.

AOE 2015 Model Policy Part IV.G(1).(Definitions).

Title IX Prohibitions Against Discrimination “on the basis of sex”

- Title IX of the Education Amendments Act of 1972 (“Title IX”) announced a prohibition against discrimination - on the basis of sex - in educational programs and activities, including employment and admissions for recipients of federal funds (which typically is most schools).
- All forms of sex-based discrimination, including sexual harassment, were thus also prohibited by Federal Law.
- Accordingly most school districts already had an obligation to respond to sexual harassment in a manner that complies with federal law.

Federal Title IX Duty to Respond

- For over 20 years, it has been settled law that a District with **actual knowledge** of sexual harassment in an educational program or activity of the District against a person in the United States must respond promptly in a manner that is not **deliberately indifferent**.
- A District is **deliberately indifferent** only if its response to sexual harassment is **clearly unreasonable in light of the known circumstances**.
 - This is the opening of the new Policy for the Prevention of Sexual Harassment Prohibited by Title IX.
 - The law underpinning the above 2 paragraphs IS not new.

May 2020 Regulations Announced by USDOE/OCR

- HOWEVER: last May, the U.S. Department of Education's Office of Civil Rights announced final regulations that codified, for the first time, that Title IX's prohibition *against sexual harassment, would explicitly include for the first time acts of sexual assault, dating violence, domestic violence, and stalking.*

May 2020 Regulations Announced by USDOE/OCR

- Furthermore, it announced sweeping changes in how schools can and must PROCESS and RESPOND to actual knowledge of allegations of sexual harassment, including sexual assault, dating violence, domestic violence and stalking.
- It also emphasized “***A District may be deemed to have been ‘deliberately indifferent’ based on its restriction of rights protected under the U.S. Constitution, including the First, Fifth and Fourteenth Amendments.***”
 - Title IX Policy, Section I.A.

In explaining its regulations, the Office said this:

“This new regulation will hold schools accountable for **failures to respond equitably** and **promptly** to incidents of sexual misconduct.”

“The action also **empowers survivors to make decisions** about how a school responds to incidents of sexual harassment.”

“(The regulation) will also provide **due process protections to students facing accusations of sexual misconduct**...The regulation provides a transparent grievance process that treats the accused as innocent until proven guilty, requires the school to state a standard of evidence, and requires the school to provide a written decision and rationale.”

Key Procedural Provisions

- Victims (“Complainants”) are given a degree of control over how the process will proceed –
 - whether a full investigation and finding of responsibility is pursued (through a process they have created and titled the “Title IX Grievance Process”) -
 - or whether they will simply request and receive “Supportive Measures.”

Title IX Grievance Process

- Must be followed and exhausted (ie: completed) PRIOR to any DISCIPLINE or unduly burdensome measures are to be imposed on a Respondent of Title IX Sexual Harassment allegations.
- The Grievance Process requires a full investigation and adjudication of responsibility for sexual harassment - and contains significant additional layers of procedure, which are unique and contrast to the process previously employed in similar cases through Vermont's HHB Procedures.

The Focus of Today's Training:

- 1) When must you employ the Title IX mandated response to “actual knowledge of sexual harassment” - and not Vermont’s “HHB” response - to “notice” of “sexual harassment?”
- 2) What IS Title IX’s Intake and Assessment Process?
- 3) What IS Title IX’s Grievance Process?

II. DEFINING “Sexual Harassment”

When do you use which Process?

Vermont’s HHB Process

Vermont’s Unlawful Harassment Process

Title VII Sexual Harassment Process

Federal Title IX Sexual Harassment Grievance Process

To determine which process is triggered you first must understand the various definitions of sexual harassment that now exist, under both Vermont and Federal Law.

HYPO 1: “Back to the Future” Lorraine & Biff

A SCENE FROM THE SCHOOL CAFETERIA:

Biff: You want it, you know you want it, and you know you want me to give it to you.

Lorraine: Shut your filthy mouth, I'm not that kind of girl...

Biff: (Grabbing her around the waist) Well maybe you are and you just don't know it yet!

Lorraine: Get your meat hooks off of me!



Sexual Harassment (by Staff or Students) as defined by - Vermont (HHB) Law:

Defined as

“...unwelcome conduct of a sexual nature, that includes **sexual violence/sexual assault**, sexual advances, requests for sexual favors, and other verbal, written visual or physical conduct of a sexual nature, and includes situations when one or both of the following occur:

- i. Submission to that conduct is made either explicitly or implicitly a term or condition of a student’s education, academic status, or progress; or
- ii. Submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting that student.

Sexual harassment may ALSO include student-on-student conduct or conduct of a non-employee third party that creates a hostile environment. A hostile environment exists where the harassing conduct is severe, persistent or pervasive so as to deny or limit the student’s ability to participate in or benefit from the educational program on the basis of sex.

AOE 2015 Model Policy Part IV.G(1).(Definitions).

Title VII and Vermont Fair Employment Practices Act law on hostile environment harassment

The first two factors are mostly the same:

1. Unwelcome conduct directed at the complainant
2. Based on gender, i.e. sexual harassment
3. The harassment is pervasive and severe such that it alters the terms and conditions of employment. (objectively and subjectively)

Sexual Harassment Prohibited by Title IX

Policy Section II.M. Definition

“Sexual Harassment...is conduct on the basis of sex, occurring in an education program or activity of the District, against a person in the United States, that satisfies one or more of the following...”

THRESHOLD CONSIDERATIONS:

- > Context/location of conduct - both with respect to education program/activity of district and IN the United States
- > Covered Parties

“Occurring IN an education program OR activity of the District.”

SOURCE:

34 C.F.R. Sec. 106.2(h)

“All of the operations of a post-secondary institution or local education agency. It includes locations, events or circumstances over which a (District) **exercised substantial control over both the respondent and complainant in the context in which the sexual harassment occurs.**”

So, the first question is whether it is a program or event over which we exercise control over the parties.

How much control is enough to trigger an obligation under Title IX?

The early education program has a parent board that does most of the governance. It has an executive director. It has most of its own policies and procedures. It is not aware of Title IX. However, the EE program is part of the district. When a sexual harassment claim arises there, who is legally responsible for the Title IX violation if it is not done right?

What about the after school program?

What factors will be considered?

Covered Parties Policy I.D.

Title IX Section I.D.

“This Policy shall apply to all students, employees, and ANY THIRD PARTIES WHO CONTRACTS WITH THE DISTRICT to provide services to district students or employee, upon district property, or during any school program or activity.”

What about volunteers?

Title IX Definition. Policy II.M. Conduct by Staff OR Students. (Hostile Environment)

First OPTION for potential sexual harassment by both staff OR students

Sexual Harassment prohibited under Title IX is conduct on the basis of sex, **occurring in an education program or activity of the District, against a person in the United States**, that satisfies...:

Sexual Harassment:

- 1) Conduct based on gender;**
- 2) Unwelcome conduct; and**
- 3) 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.**

HYPO 1: “Back to the Future” Lorraine & Biff

A SCENE FROM THE SCHOOL CAFETERIA:

Biff: You want it, you know you want it, and you know you want me to give it to you.

Lorraine: You shut your filthy mouth, I'm not that kind of girl!

Biff: Well maybe you are and you just don't know it yet.

Lorraine: Get your meat hooks off of me!



HYP0 1: “Back to the Future” Lorraine & Biff

The behavior is by a student towards another student. Occurring within an educational program or activity (lunch room) of the District. And constitutes “**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**.



What about the other options?

Definition. Policy II.M. Conduct by Staff OR Students.

Second OPTION for potential sexual harassment by both staff OR students

Sexual Harassment prohibited under Title IX is conduct on the basis of sex, **occurring in an education program or activity of the District, against a person in the United States**, that satisfies...:

3. ...any conduct which would satisfy one or more of the following definitions (Sexual Assault, Dating Violence, Domestic Violence, Stalking):

a. **Sexual Assault**: Any sexual act(s) directed at another person without **consent** of the victim, including instances where the victim is unable to lawfully give **consent** because of age or cognitive ability.

Consent to a sexual act exists where words, actions or other non-verbal conduct objectively communicates a desire to participate in the sexual act(s).

Consent to some sexual act(s) does not indicate consent to all sexual acts.

Consent may be withdrawn at any time by objectively communicating through words, actions or other non-verbal conduct.

Definition. Policy II.M. Conduct by Staff OR Students.

THIRD OPTION for potential sexual harassment by both staff OR students

Sexual Harassment prohibited under Title IX is conduct on the basis of sex, **occurring in an education program or activity of the District, against a person in the United States**, that satisfies....:

b. Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or an intimate nature with the victim. The existence of the relationship shall be considered with reference to the length of the relationship, the type of relationship and the frequency of the interactions between the persons involved in the relationship.

Definition. Policy II.M. Conduct by Staff OR Students.

FOURTH OPTION for potential sexual harassment by both staff OR students

Sexual Harassment prohibited under Title IX is conduct on the basis of sex, **occurring in an education program or activity of the District, against a person in the United States**, that satisfies...:

c. **Domestic Violence:** Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child, by a person who is cohabiting with or has cohabited with the victim as a spouse or intimate partner or any other persons protected under 13 V.S.A. section 1101 from domestic abuse.

Definition. Policy II.M. Conduct by Staff OR Students.

FIFTH OPTION for potential sexual harassment by both staff OR students

Sexual Harassment prohibited under Title IX is conduct on the basis of sex, **occurring in an education program or activity of the District, against a person in the United States**, that satisfies....:

d. **Stalking**: A purposeful course of conduct by a person directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

HYP0 2

**Richard “DICK” Vernon (Vice Principal,
with teaching duties)**



Claire Standish (Senior)



Example 2

Claire Standish is a high school senior. Unfortunately, she has failed to turn in her homework for math three times in a row and is made to serve after school detention in the school library. Richard Vernon, Vice Principal, supervises the detention, walking up and down the aisle monitoring the students. On a few occasions he moves out of the aisle and stops behind Claire's chair. She gets the feeling he is looking at her. Once he put his hand on her shoulder and leaned over her desk for a few seconds before she looks up and says "What??" and finds Richard quickly averting his eyes. Claire believes he was actually looking down her blouse. By the end of the detention Claire is feeling very uncomfortable. When the session is over she gets up to leave and Richard Vernon says to her "I hope I get to see you again - **really soon.**" Flustered and annoyed Claire walks out, gets into her dad's car where he is waiting to take her home and tells him everything.

The next day, Claire's dad, Mr. Standish calls you as school principal and tells you that his daughter was "*hit on*" by Dick Vernon and that he thinks he is a creep. "*So my question for you is – what are you going to do about this sick guy???*"

Definition. Policy II.M. Conduct by Staff ONLY.

Sexual Harassment prohibited under Title IX is conduct on the basis of sex, **occurring in an education program or activity of the District**, **against a person in the United States**, that satisfies...:

1. A **school district employee** conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct.

NOTE: Title IX limits this to conduct by employees. VERMONT's Definition of Sexual Harassment does NOT limit "Quid Pro Quo" conduct to staff/teachers/administrators only, while not typical, the definition holds open the possibility of behavior happening by students as well.

Definition. Policy II.M. Conduct by Staff ONLY.

OPTION for potential sexual harassment for staff ONLY

Sexual Harassment prohibited under Title IX is conduct on the basis of sex, **occurring in an education program or activity of the District**, **against a person in the United States**, that satisfies....:

1. A **school district employee** conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct.

DOES THIS apply to what happened between Claire and Dick Vernon?

Quid Pro Quo BETWEEN Employees

Focus is on the supervisory relationship

Power to impact employment conditions

Adverse or positive employment actions trigger a finding of QPQ

Take away:

Close consideration of supervisor/subordinate relationships

What the conduct you are aware of only satisfies IX?

- ANSWER: YOU WILL USE TITLE IX PROCESS TO HANDLE IT

So what do you do if it satisfies both VT and T.9 DEFINITIONS?

DISCUSSION:

Additionally: if the target of the behavior is a student AND the allegations implicate both sexual harassment AND another policy term - like bullying, or harassment on the basis of another protected category like race?

Discussion:

So what do you do if it satisfies only VT law?

DISCUSSION:

III. PRE GRIEVANCE PROCESS - “INTAKE & ASSESSMENT”

- Receipt of Actual Knowledge/Reports of Title IX Sexual Harassment (and documentation of same)
- Referral of Reports to Title IX Coordinator (and documentation of same)
- Assessment by Coordinator of Information – does it constitute “Actual Knowledge” (and documentation of same)/ ie: a “Report?”
- If information constitutes a “Report” / “Actual Knowledge” Then Coordinator must engage in Contact with Complainant (and documentation of same)

TITLE IX's INTAKE & ASSESSMENT Process

[2] TITLE IX COORDINATOR

Receives REPORTS (and student conduct forms) of Title IX Sexual Harassment from ANYONE including staff (either DE or DIRECTLY FROM STAFF).

[3] TITLE IX COORDINATOR CONTACTS COMPLAINANT:

As soon as reasonably possible to discuss availability of supportive measures without investigation, inform of filing process for Formal Complaints, consider Complainant's wishes regarding both.

[4] TITLE IX COORDINATOR

>INSTITUTE SUPPORTIVE MEASURES EQUITABLY and

>IF COMPLAINANT DOES NOT FILE A FORMAL COMPLAINT OF SEXUAL HARASSMENT, DECIDE WHETHER THERE THEY AS TITLE IX COORDINATOR NEED to FILE COMPLAINT

[1] **ANY EMPLOYEE.** Where any employee has sufficient personal knowledge of alleged facts to be aware that if such facts were found to be true it would constitute Title IX Sexual Harassment the employee **SHALL IMMEDIATELY FILL OUT A STUDENT CONDUCT FORM** and **IMMEDIATELY REPORT** to **BOTH DESIGNATED EMPLOYEE (AND TITLE IX Coordinator ?)** .

Notice vs. Actual Knowledge

- The AOE Model Policy (May 2015) triggers duties (and an obligation to respond by a District), in response to possible sexual harassment (including sexual assault), when the District has received “**notice**” of the behavior. That is the legal term that is employed and used throughout the procedures.
- The Title IX Regulations (in force as of 8/14/20), triggers duties (and an obligation to respond by a District), in response to possible sexual harassment (including assault), when the District has “**Actual Knowledge.**” That is the legal term that is employed and used through the regulations, and now the Title IX Policy.

NOTICE – VT AOE Model HHB Policy IV.(I) Definition

Means

(1) written ... or oral information that hazing, harassment or bullying **may have occurred which has been provided to a designated employee** from another employee, the student allegedly subjected to the hazing, harassment or bullying, another student, a parent or guardian, or any other individual who has reasonable cause to believe the alleged conduct occurred.

- If the school learns of possible hazing, harassment or bullying through other means, for example, if information about hazing, harassment or bullying is received from a third party (such as a witness to an incident, anonymous letter or phone call), different factors will affect the school's response. These factors include the source and nature of the information; the seriousness and credibility of the source of report; whether any individuals can be identified who were subjected to the alleged harassment; and whether those individuals want to pursue the matter.

(2) In addition, for purposes of violations of **federal anti-discrimination laws (race, gender, disability)**, **notice may occur when an employee of the district**, including any individual who a student could reasonably believe has this authority or responsibility, **knows or in the exercise of reasonable care should have known about potential unlawful harassment or bullying.**

“Actual Knowledge” – Title IX. Policy Sec. II.A.

“(where)any employee has sufficient personal knowledge of the alleged facts to be aware that if such facts were found to be true it would (satisfy the definition of sexual harassment as defined under Title IX).”

Ok,...so, any employee..like ANY? YES!

“a. a (District’s) **Title IX Coordinator**; or

b. any **official of the (District)** who has **the authority to institute corrective measures** on behalf of the (District); OR

c. **any employee** of an elementary and secondary school.”

VT's "Notice" trigger vs. Title IX's Actual Knowledge -

IF Title IX says that **Actual Knowledge** can be provided to a school district when ANY employee has such knowledge, and not just when a Title IX Coordinator or an Administrator does, does this require any significant change to how staff handle these kinds of issues ?

- NOT REALLY.
- Look at your HHB procedures, first page, top of the page.....

VT HHB PROCESS: School Employee's Knowledge

- Any school employee **who overhears or directly receives information** about conduct that **might constitute** hazing, harassment and/or bullying **shall**
 - **immediately** report the information to a designated employee and
 - **immediately** complete a Student Conduct Form.
- Model Procedures I.B.

VT HHB PROCESS: School Employee's Knowledge

Any school employee who **witnesses conduct that s/he reasonably believes might** constitute hazing, harassment and/or bullying shall

- > take **reasonable action to stop** the conduct and to prevent its recurrence; and
- > immediately **report** it to a designated employee; and
- > immediately complete a **Student Conduct Form**.

Model Procedures I.B.

TITLE IX PROCESS: ANY EMPLOYEE WITH 'ACTUAL KNOWLEDGE':

- Duty to Refer Reports to Title IX Coordinator: Where **any District employee** – other than the employee harasser, or the Title IX Coordinator – **receives information of conduct which may constitute sexual harassment** under this Policy, s/he shall **WITHOUT DELAY, inform the Title IX Coordinator of the alleged sexual harassment.** **Failure to report will subject the employee to discipline up to and including dismissal.**

Source: Model Policy for the Prevention of Sexual Harassment as Prohibited by Title IX, Section III.B.1b.

What's the big deal?

WITH THIS CHANGE Adult/Employees previously did NOT have a duty to report adult-to-adult sexual harassment or other qualifying misconduct.

Adults could keep it secret.

NOW--employees must report because their knowledge is notice to the employer or be subject to discipline.

Take away: Training of employees, warning re expectations and consequences for failure to comply, provide copies of policy

VERMONT HHB PROCESS – KEY PERSONNEL

- **Designated Employee:** Receipt and prompt delivery to administrators of Student Conduct Forms and other reports of behaviors which might constitute a violation of the HHB policy.
- **Building Administrator:** Receipt of Student Conduct Forms, and any reports of behaviors which might constitute a violation of the HHB Policy, Decide Whether “Reasonable Belief Allegations May Constitute a Violation of HHB Policy” and if so, assign and launch investigation.
- **Investigators.** Conduct investigation and decide whether violation of policy occurred, recommend “remedial actions reasonably designed to prevent a reoccurrence.”
- **Building Administrators.** Institute Discipline.

TITLE IX PROCESS – KEY PERSONNEL

- TITLE IX COORDINATOR
- INVESTIGATOR
- INFORMAL RESOLUTION PROCESS FACILITATORS (“Facilitators”)
- INITIAL DECISION-MAKER
- APPELLATE DECISION-MAKER

TITLE IX COORDINATOR – Duty to Assign

The District must designate and authorize **at least one employee** to coordinate its efforts to comply with its responsibilities under this Policy, which employee must be referred to as the “Title IX Coordinator.” Model Policy, V.B.

Any individual designated by the District as a Title IX Coordinator ***shall be free of conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.*** Model Policy, V.B.

> CAN YOU HAVE MORE THAN ONE COORDINATOR?

TITLE IX's INTAKE & ASSESSMENT Process

[2] TITLE IX COORDINATOR

Receives REPORTS (and student conduct forms) of Title IX Sexual Harassment from ANYONE including staff (either DE or DIRECTLY FROM STAFF).

[3] TITLE IX COORDINATOR CONTACTS COMPLAINANT:

As soon as reasonably possible to discuss availability of supportive measures without investigation, inform of filing process for Formal Complaints, consider Complainant's wishes regarding both.

[4] TITLE IX COORDINATOR

>INSTITUTE SUPPORTIVE MEASURES EQUITABLY and

>IF COMPLAINANT DOES NOT FILE A FORMAL COMPLAINT OF SEXUAL HARASSMENT, DECIDE WHETHER THERE THEY AS TITLE IX COORDINATOR NEED to FILE COMPLAINT

[1] **ANY EMPLOYEE.** Where any employee has sufficient personal knowledge of alleged facts to be aware that if such facts were found to be true it would constitute Title IX Sexual Harassment the employee **SHALL IMMEDIATELY FILL OUT A STUDENT CONDUCT FORM** and **IMMEDIATELY REPORT** to **BOTH DESIGNATED EMPLOYEE (AND TITLE IX Coordinator ?)** .

What if Reporter (student/parent) provides Actual Knowledge to at School Staff Member/Employee who is not the Title IX Coordinator?

- **The STAFF MEMBER/EMPLOYEE should DOCUMENT and IMMEDIATELY REFER IT TO THE TITLE IX COORDINATOR.**

Student/Staff Conduct Form / Staff/Teacher – **NEW ****

NOTE: If you personally witnessed the conduct you SHALL report conduct you reasonably believe MIGHT be HHB. If you did NOT personally witness the conduct, you SHALL report conduct that MIGHT be HHB.

STAFF /TEACHER/ EMPLOYEE AUTHOR OF FORM: _____ DATE/TIME FORM FILLED OUT: DATE _____ TIME: _____

(WERE YOU DIRECT WITNESS TO INCIDENT? __ Y __N) IF NOT IDENTIFY STUDENT/ADULT/EMPLOYEE REPORTER NAME: _____

(& WAS THAT REPORTER A WITNESS TO THE INCIDENT? _ Y ___ NO _____)

IDENTITY OF ALLEGED STAFF/STUDENT RESPONDENT: _____

IDENTITY OF COMPLAINANT (person targeted by the behavior, need not have reported it): _____

DATE OF ALLEGED INCIDENT: Date: _____ Time: _____

DATE/TIME INFORMATION RECEIVED BY AUTHOR (IF NOT A WITNESS TO INCIDENT) _____ Date _____ Time _____

IDENTITY OF WITNESSES (if any): _____

IDENTITY OF ANY OTHER DISTRICT EMPLOYEE WITNESSES (IF ANY): _____

ANY INITIAL ACTIONS TAKEN BY AUTHOR: _____

DESCRIPTION OF WITNESSED OR REPORTED CONDUCT:

(use more pages if necessary)

DOES AUTHOR HAVE ADDITIONAL KNOWLEDGE REGARDING ALLEGED INCIDENT - SEPARATE FROM THAT REPORTED OR WITNESSED? YES NO

IF "YES" THEN DESCRIBE THAT INFORMATION: _____

***NEW AUG 2020: IF YOU REASONABLY BELIEVE THE CONDUCT MAY OR MIGHT BE "SEXUAL HARASSMENT" YOU MUST REFER THIS MATTER DIRECTLY TO YOUR TITLE IX COORDINATOR WITHOUT DELAY.**

DATE & TIME REPORTED TO TITLE IX COORDINATOR: DATE: _____ TIME: _____

Title IX Coordinator Signature acknowledging receipt: _____

INCIDENT REPORTED TO DESIGNATED EMPLOYEE? ___ YES ___ NO

NO (If no, explain in detail WHY not reported to DE: _____

IF REPORTED TO DE/DATE & TIME INCIDENT WAS REPORTED TO C-1 DESIGNEE: DATE _____ / TIME _____ DE Signature acknowledging receipt: _____

What if Reporter (teacher/student/parent) provides Actual Knowledge directly to the Designated Employee, AND the DE is not the Title IX Coordinator?

- **The DESIGNEE should DOCUMENT AND IMMEDIATELY REFER it to THE TITLE IX COORDINATOR.**

Student/Staff Conduct Form-DESIGNEE-**NEW****

DESIGNATED EMPLOYEE AUTHOR OF FORM: _____ DATE/TIME FORM FILLED OUT: DATE _____ TIME: _____

(WERE YOU DIRECT WITNESS TO INCIDENT? __ Y __ N) IF NOT IDENTIFY STUDENT/ADULT/EMPLOYEE REPORTER NAME: _____

(& WAS THAT REPORTER A WITNESS TO THE INCIDENT? _ Y ___ NO _____)

IDENTITY OF ALLEGED STAFF/STUDENT RESPONDENT: _____

IDENTITY OF COMPLAINANT (person targeted by the behavior, need not have reported it): _____

DATE OF ALLEGED INCIDENT: Date: _____ Time: _____

DATE/TIME INFORMATION RECEIVED BY DESIGNEE (IF NOT A WITNESS TO INCIDENT) _____ Date _____ Time _____

IDENTITY OF STUDENT WITNESSES (if any): _____

IDENTITY OF ANY OTHER DISTRICT EMPLOYEE WITNESSES (IF ANY): _____

ANY INITIAL ACTIONS TAKEN BY DE: _____

DESCRIPTION OF WITNESSED OR REPORTED CONDUCT:

_____ (use more pages if necessary)

DOES DESIGNEE HAVE ADDITIONAL KNOWLEDGE REGARDING ALLEGED INCIDENT - SEPARATE FROM THAT REPORTED OR WITNESSED? YES NO

IF YES DESCRIBE THAT INFORMATION: _____

****NEW AUG 2020: IF YOU REASONABLY BELIEVE THE CONDUCT MAY OR MIGHT BE "SEXUAL HARASSMENT" YOU MUST REFER THIS MATTER DIRECTLY TO YOUR TITLE IX COORDINATOR WITHOUT DELAY.**

DATE & TIME REPORTED TO TITLE IX COORDINATOR: DATE: _____ TIME: _____

Title IX Coordinator Signature acknowledging receipt: _____

INCIDENT REPORTED TO BUILDING ADMINISTRATOR? _____ YES _____ NO (If no, explain in detail WHY not reported to BA: _____

DATE & TIME INCIDENT REPORTED BY DE TO BA: DATE _____ / TIME _____

• **Administrator Signature acknowledging receipt:** _____

What if a Employee/Teacher/Designee provides Actual Knowledge directly to the Building Administrator, AND the Building Administrator is not the Title IX Coordinator?

- **The Building Administrator should DOCUMENT and IMMEDIATELY refer it to the TITLE IX COORDINATOR.**

What if Reporter (teacher/student/parent) provides Actual Knowledge directly to the Building Administrator, AND the Building Administrator is not the Title IX Coordinator?

- **The Building Administrator should DOCUMENT and IMMEDIATELY refer it to the TITLE IX COORDINATOR.**

Student/Staff Conduct Form-Building Administrator-**NEW****

BUILDING ADMINISTRATOR/AUTHOR OF FORM: _____ DATE/TIME FORM FILLED OUT: DATE _____ TIME: _____

(WERE YOU DIRECT WITNESS TO INCIDENT? __ Y __ N) IF NOT IDENTIFY STUDENT/ADULT/EMPLOYEE REPORTER NAME: _____

(& WAS THAT REPORTER A WITNESS TO THE INCIDENT? _ Y ____ NO _____)

IDENTITY OF ALLEGED STAFF/STUDENT RESPONDENT: _____

IDENTITY OF COMPLAINANT (person targeted by the behavior, need not have reported it): _____

DATE OF ALLEGED INCIDENT: Date: _____ Time: _____

DATE/TIME INFORMATION RECEIVED BY Building Administrator (IF NOT A WITNESS TO INCIDENT) _____ Date _____ Time _____

IDENTITY OF STUDENT WITNESSES (if any): _____

IDENTITY OF ANY OTHER DISTRICT EMPLOYEE WITNESSES (IF ANY): _____

ANY INITIAL ACTIONS TAKEN BY AUTHOR: _____

DESCRIPTION OF WITNESSED OR REPORTED CONDUCT:

_____ (use more pages if necessary)

DOES BUILDING ADMINISTRATOR HAVE ADDITIONAL KNOWLEDGE REGARDING ALLEGED INCIDENT - SEPARATE FROM THAT REPORTED OR WITNESSED? YES NO

IF YES DESCRIBE THAT INFORMATION: _____

BA DETERMINATION AS TO WHETHER THERE IS INFORMATION OF ALLEGATIONS, WHICH IN BA'S JUDGMENT, THEY REASONABLY BELIEVE MAY CONSTITUTE HARASSMENT OR HAZING OR BULLYING: YES: _____ (IF YES HHB INVESTIGATION MUST COMMENCE) NO: _____

EXPLAIN DECISION: (Use back of form if more room needed) _____

Building Administrator Signature _____ **Date:** _____

****NEW AUG 2020: IF YOU REASONABLY BELIEVE THE CONDUCT MAY OR MIGHT BE "SEXUAL HARASSMENT" YOU MUST REFER THIS MATTER DIRECTLY TO YOUR TITLE IX COORDINATOR WITHOUT DELAY. IN SUCH CASE NO DECISION TO LAUNCH A VT HHB INVESTIGATION CAN OCCUR WITHOUT CONSULTATION WITH THE TITLE IX COORDINATOR FIRST.**

DATE & TIME REPORTED TO TITLE IX COORDINATOR: DATE: _____ TIME: _____

Title IX Coordinator Signature acknowledging receipt: _____

IN CASES WHERE INVESTIGATION IS LAUNCHED:

Assignment of Investigator; _____ (Name) Date/Time of assignment: _____

Date Investigation Launched: (NO later than 1 day from Notice to DE): _____

Policy and Procedures Sent to Complainant Parent: _____ Accused: _____ (Dates)

VSBIT SPONSORED TRAINING MATERIALS OCT 2020
/ H. Lynn / For Educational Purposes Only Shall Not
Constitute Legal Advice

What if Reporter (teacher/student/parent) provides Actual Knowledge directly to the Title IX COORDINATOR?

- The Title IX COORDINATOR should DOCUMENT that contact on their OWN STUDENT CONDUCT FORM and IMMEDIATELY ASSESS their legal obligations based on content of the allegations and any other information known about the allegations.

STUDENT/STAFF CONDUCT FORM – T.9 COORDINATOR

TITLE IX COORDINATOR/AUTHOR OF FORM: _____

DATE/TIME FORM FILLED OUT: DATE _____ TIME: _____

(WERE YOU DIRECT WITNESS TO INCIDENT? Y N) IF NOT IDENTIFY STUDENT/ADULT/EMPLOYEE REPORTER NAME: _____

(& WAS THAT REPORTER A WITNESS TO THE INCIDENT? Y ___ NO _____)

IDENTITY OF ALLEGED STAFF/STUDENT RESPONDENT : _____

IDENTITY OF COMPLAINANT STUDENT (student targeted by the behavior, need not have reported it): _____

DATE OF ALLEGED INCIDENT: Date: ___ Time: _____

DATE/TIME INFORMATION RECEIVED BY TITLE IX COORDINATOR (IF NOT A WITNESS TO INCIDENT) ___ Date ___ Time

IDENTITY OF STUDENT WITNESSES (if any): _____

IDENTITY OF ANY OTHER DISTRICT EMPLOYEE WITNESSES (IF ANY): _____

DESCRIPTION OF WITNESSED OR REPORTED CONDUCT:

DOES AUTHOR/TITLE IX HAVE SEPARATE / ADDITIONAL KNOWLEDGE REGARDING ALLEGED INCIDENT - SEPARATE FROM THAT REPORTED OR WITNESSED? YES NO

DESCRIBE: _____

DOES INFORMATION AVAILABLE TO TITLE IX COORDINATOR PROVIDE ACTUAL KNOWLEDGE OF A “REPORT OF SEXUAL HARASSMENT PROHIBITED BY TITLE IX” such that the COORDINATOR HAS sufficient personal knowledge of the alleged facts to be aware that if such facts were found to be true it would (satisfy the definition of sexual harassment as defined under Title IX.”

YES* [___] OR NO[___] Explain:

***IF YES THEN AS SOON AS REASONABLY POSSIBLE AFTER RECEIVING A REPORT OF SEXUAL HARASSMENT, TITLE IX COORDINATOR SHALL CONTACT COMPLAINANT (OR PARENT/GUARDIAN FOR MINOR STUDENTS). AFTER THAT CONTACT COORDINATOR SHOULD FILL OUT “FORM DOCUMENTING COORDINATOR CONTACT WITH COMPLAINANT.”**

Either way, once ANY EMPLOYEE receives Actual Knowledge of Title IX Sexual Harassment allegations – the Title IX Coordinator must be informed **WITHOUT DELAY.**

VT HHB REQUIRES STAFF TO IMMEDIATELY inform the DE of information that “might” be an HHB violation, and then the DE TO “Promptly inform the school/building administrator(s) of the information.” 2015 AOE MODEL PROCEDURES. II.A.ii.

TITLE IX Considers Actual Knowledge to Occur when ANY EMPLOYEE HAS such KNOWLEDGE. **SO STAFF MUST INFORM THE TITLE IX COORDINATOR **WITHOUT DELAY****”.

- Failure to report will subject the employee to discipline **up to and including dismissal. [WHAT ARE THE IMPLICATIONS OF THIS?]**

“Report of Sexual Harassment” – Title IX

- For purposes of Title IX, a “**Report of Sexual Harassment**” is any report which provides the District with **actual knowledge** of sexual harassment or allegations of sexual harassment prohibited by Title IX.

THIS TRIGGERS THE INTAKE (AND ASSESSMENT) PROCESS

“Actual Knowledge” – Title IX. Policy Sec. II.A.

“(where)any employee has sufficient personal knowledge of the alleged facts to be aware that if such facts were found to be true it would (satisfy the definition of sexual harassment as defined under Title IX).”

Ok,...so, any employee..like ANY? YES!

“a. a (District’s) **Title IX Coordinator**; or

b. any **official of the (District)** who has **the authority to institute corrective measures** on behalf of the (District); OR

c. **any employee of an elementary and secondary school.**”

STUDENT/STAFF CONDUCT FORM – T.9 COORDINATOR

TITLE IX COORDINATOR/AUTHOR OF FORM: _____

DATE/TIME FORM FILLED OUT: DATE _____ TIME: _____

(WERE YOU DIRECT WITNESS TO INCIDENT? Y N) IF NOT IDENTIFY STUDENT/ADULT/EMPLOYEE REPORTER NAME: _____

(& WAS THAT REPORTER A WITNESS TO THE INCIDENT? Y ___ NO _____)

IDENTITY OF ALLEGED STAFF/STUDENT RESPONDENT: _____

IDENTITY OF COMPLAINANT (person targeted by the behavior, need not have reported it): _____

DATE OF ALLEGED INCIDENT: Date: ___ Time: _____

DATE/TIME INFORMATION RECEIVED BY TITLE IX COORDINATOR (IF NOT A WITNESS TO INCIDENT) ___ Date ___ Time

IDENTITY OF STUDENT WITNESSES (if any): _____

IDENTITY OF ANY OTHER DISTRICT EMPLOYEE WITNESSES (IF ANY): _____

DESCRIPTION OF WITNESSED OR REPORTED CONDUCT:

DOES AUTHOR/TITLE IX HAVE SEPARATE / ADDITIONAL KNOWLEDGE REGARDING ALLEGED INCIDENT - SEPARATE FROM THAT REPORTED OR WITNESSED? YES NO

DESCRIBE: _____

DOES INFORMATION AVAILABLE TO TITLE IX COORDINATOR PROVIDE ACTUAL KNOWLEDGE OF A "REPORT OF SEXUAL HARASSMENT PROHIBITED BY TITLE IX" such that the COORDINATOR HAS sufficient personal knowledge of the alleged facts to be aware that if such facts were found to be true it would (satisfy the definition of sexual harassment as defined under Title IX.)

YES* [___] OR NO[___] Explain:

***IF YES THEN AS SOON AS REASONABLY POSSIBLE AFTER RECEIVING A REPORT OF SEXUAL HARASSMENT, TITLE IX COORDINATOR SHALL CONTACT COMPLAINANT (OR PARENT/GUARDIAN FOR MINOR STUDENTS). AFTER THAT CONTACT COORDINATOR SHOULD FILL OUT "FORM DOCUMENTING COORDINATOR CONTACT WITH COMPLAINANT."**

Legal duties triggered by a Report of Title IX Sexual Harassment?

A REPORT OF ALLEGED TITLE IX SEXUAL HARASSMENT Triggers the following obligations:

- Regardless of who receives it within the school system - referral of the information **without delay** to the TITLE IX COORDINATOR (either to the District-wide Coordinator - or a building-based Coordinator if one has been created/assigned).
- The Title Coordinator then **must engage in COMPLAINANT CONTACT as soon as reasonably possible.**

“COMPLAINANT CONTACT” by the COORDINATOR

As soon as reasonably possible after receiving a Report of Sexual Harassment (from another District employee or after receiving a report directly through any means) the Title IX Coordinator shall contact the Complainant [and parent/guardian in cases where the complainant is a student under the age of 18] to:

- discuss the availability of and offer 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 to the complainant the process for filing a Formal Complaint of Sexual Harassment.

MODEL POLICY, III.B.1.

COMPLAINANT CONTACT by COORDINATOR

CONTACT MUST COMMUNICATE THE FOLLOWING:

- YOU (as T.9 Coordinator) have been made aware of the allegations;
- The Complainant has a right to SUPPORTIVE MEASURES;
- The Complainant has the RIGHT and the OPTION to File a Formal Complaint of Sexual Harassment (and how – either give them a copy of form or where to get information) and EXPLAIN PROCESS FOR FILING FORMAL COMPLAINT;
- That SUPPORTIVE MEASURES are not dependent upon the FILING OF A FORMAL COMPLAINT.
- RECOMMENDED: Provide a copy of the T.9 Policy

T.9 COORDINATOR INITIAL Contact withWHO?

- **COMPLAINANT** (even if they are not the one who made the Report of Title IX Sexual Harassment).
- **And if COMPLAINANT IS A MINOR?** You contact their parent/guardian.
- Policy III.B.1.c. says “contact” Complainant or if Minor their Parent/Guardian.
- **BEST PRACTICE:**
 - For younger students contact the parent(s)/guardian(s) directly (younger students)
 - For older students, perhaps meet with the student at school and follow up with phone call and letter to their parents covering the same content as covered with their child (send via email).

FORMAL COMPLAINT OF T.9 SEXUAL HARASSMENT - FORMS

SHOULD BE POSTED ON YOUR SCHOOL/DISTRICT WEBSITE.

- MODEL TITLE IX POLICY Section IV. B.5. “**While forms MAY be obtained from the Title IX Coordinator or on the District or school website,** at a minimum, a Formal Complaint of Sexual Harassment must:
 - a) contain the name and address of the Complainant and the student’s parent or guardian if the complainant is a minor student;
 - b) describe the alleged sexual harassment;
 - c) request an investigation of the matter;
 - d) when filed by the Complainant be signed by the Complainant or otherwise indicate that the complainant is the person filing the complaint, or if not filed by the Complainant be signed by the Title IX Coordinator.

FORM – Formal Complaint of T.9 Sexual Harassment

FORMAL COMPLAINT OF SEXUAL HARASSMENT PROHIBITED BY TITLE IX – FORM

Formal Complaints of Title IX Sexual Harassment may be filed with the Title IX Coordinator in person, by mail, or by email and must be in writing. **ALL FIELDS on this form must be filled out.**

Complainant Name and Address: _____ (Name)
_____ (Street address)
_____ (Town/zip)
_____ Email _____ cellphone

(If Minor) Complainant Parent/Guardian Name(s): _____
_____ (street address)
_____ (Town/zip)
_____ Email _____ cellphone

Please describe (using additional sheets of paper if necessary) the incident(s) of sexual harassment:

Do you hereby request an investigation of the matter through the Title IX Grievance Process?

YES NO Signature of Complainant: _____ Date: _____

OR OTHERWISE INDICATE WHETHER THE COMPLAINANT IS FILING THE COMPLAINT.

(If minor) Signature of Complainant Parent/Guardian: _____ Date: _____

SUPPORTIVE MEASURES

“Supportive Measures are non-disciplinary, non-punitive, individualized services, offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent before or after the filing of a Formal Complaint of Sexual Harassment 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.

These measures may include, but are not limited to, the following:

- 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 and monitoring of certain areas of the district campus;
- And other similar measures.

SOURCE: Title IX Policy, Section II. N.

AGAIN: These measures must NOT “unreasonably burden” either party – Complainant OR Respondent.

ANY OTHER DUTIES AT THIS STAGE???

District Response Must Be Equitable. In its response the District shall treat Complainants and Respondents equitably by providing supportive measures to the Complainant and by following the Title IX Grievance Process prior to imposing any disciplinary sanctions or other actions that are not supportive measures against a Respondent.

NO discipline or unreasonably burdensome measures may be taken against the Respondent (accused) at this stage.

NO discipline or unreasonably burdensome measures may be taken against Respondent (accused) until the Grievance Process has been completed.

FORM – COORDR's CONTACT WITH COMPLAINANT (AND/OR PARENT/GUARDIAN)

INSTRUCTIONS FOR USE: Form is to be used to by T.IX Coordinator to document compliance with Model Policy Section III.B.1.c Complainant Contact and related details of that contact.

COMPLAINANT NAME: _____ [CIRCLE ONE] STUDENT/ EMPLOYEE

IF STUDENT IS MINOR NAME OF COMPLAINANT PARENT/GUARDIAN CONTACTED: _____

CONTACT DATE: _____ TIME: _____

[_____] Confirm Supportive Measures Were Explained _____ & Offered _____

[_____] Confirm Explanation That Receipt of Supportive Measures DO NOT require Formal Complaint Filing

Describe Here ANY Supportive Measures Requested by Complainant/Parent/Guardian:

Describe Here ANY Supportive Measures Arranged for During Initial Meeting/Contact:

[_____] Confirm Process for Formal Complaint Was Explained _____

[_____] Confirm Explanation That Receipt of Supportive Measures do NOT require Formal Complaint Filing _____

Complaint Form Offered: _____ OR directions for how to obtain were provided: _____

Policy and Procedures [Provided/Sent?? to Complainant Parent: ____ Accused: ____ (Dates)

Describe here ANY ADDITIONAL information shared by Complainant regarding allegations: _____

COORDINATOR NAME: _____ COORDINATOR SIGNATURE: _____

LETTER-Notice of Coordinator Complainant Contact (Following Report From ANY Source)

[INSERT HERE DATE OF LETTER OR EMAIL]

[INSERT METHOD OF DELIVERY: FIRST CLASS MAIL OR EMAIL]

TO: Complainant (Individual alleged to have been victim of sexual harassment, need not have reported harassment).

[INSERT HERE MAIL ADDRESS]

[INSERT HERE EMAIL ADDRESS IF USED]

FR: Title IX Coordinator

Dear **[Insert Complainant Name and/or Guardian Name]:**

I am writing to follow up on our **[INSERT HERE THE DATE OF MEETING or PHONE CALL] [CHOOSE ONE: meeting/phone call]** wherein I contacted you in my role as Title IX Coordinator in response to a report of sexual harassment prohibited by Title IX.

During our **[CHOOSE ONE: conversation/meeting]** I explained that **[CHOOSE ONE: you/your child] [CHOOSE ONE:is/were]** entitled to receive Supportive Measures. I explained that those are available **[CHOOSE ONE: to you/to your child]** regardless of whether or not you choose to file a Formal Complaint of Sexual Harassment. **[If SUPPORTIVE MEASURES WERE REQUESTED OR AGREED TO DURING THAT CONTACT DESCRIBE ARRANGEMENTS FOR SUPPORTIVE MEASURES HERE.]**

I also explained that you are entitled to file a Formal Complaint of Harassment and the process for filing such a complaint. **[CHOOSE ONE: I provided you with a form that you can use to make such a filing/I explained where on our website you could find a form to file a complaint] [CHOOSE ONE: I also provided you with a copy/I am enclosing with this letter for your information]** a copy of the Model Policy for the Prevention of Sexual Harassment as Prohibited by Title IX.

Please feel free to contact me with any questions. I will be following up with you shortly to discuss any supportive measures you may wish to institute or explore.

Sincerely,

TITLE IX COORDINATOR

Enclosure: MODEL POLICY for the Prevention of Sexual Harassment as Prohibited by Title IX

INITIAL CONTACT WITH COMPLAINANT

- ARE YOU INVESTIGATING AT THIS POINT? **NO!** Any investigation into Title IX Allegations of sexual harassment WILL ONLY be conducted pursuant to the Title IX Grievance Process.
- LIMIT conversations around the allegations. Focus on the OFFER of supportive measures and EXPLANATION of Complainant's PROCEDURAL OPTIONS.
- Should Complainant share information about the allegations with you, document that all on "FORM – Documenting Coordinator Contact with Complainant."

Investigation of TITLE IX Sexual Harassment

- Before the District can conduct an Investigation as to whether a Respondent's conduct violates the policy for the prevention of Sexual Harassment as defined by Title IX, a written, Formal Complaint of Sexual Harassment, containing an allegation of sexual harassment and a request that the District investigate the allegations is required.

SOURCE: Title IX Policy, Section II. H.

Any investigation into Title IX Allegations of sexual harassment WILL ONLY be conducted pursuant to the Title IX Grievance Process.

CONTRAST THIS WITH VT's HHB Process.

- VT's HHB Procedures require Building Administrators to, within one school day of NOTICE to anyone in the school of those allegations - open the investigation, when they – the BUILDING ADMINISTRATOR – has “reasonable belief that the allegations MAY constitute a violation of the HHB Policies.” HHB Procedures, Section III.A.
- For allegations of hazing, or bullying, or harassment (OTHER than sexual harassment as defined by Title IX) the HHB Procedures trigger a school's duty to consider whether or not to investigate and pursue a decision as to whether the Respondent's behavior may have violated the school's policies merely upon “NOTICE” of allegations, NOT a formal written request for an investigation by the Complainant.

IV. GRIEVANCE PROCESS – FORMAL COMPLAINT OF SEXUAL HARASSMENT

FORMAL COMPLAINTS OF TITLE IX SEXUAL HARASSMENT

FILINGS by COMPLAINANT

FILINGS BY TITLE IX COORDINATOR

DISMISSAL BY TITLE IX COORDINATOR

Complainant - Definition

- A Complainant is an individual who is alleged to be the victim of conduct that could constitute “sexual harassment” under Title IX’s definition.
- In order for an individual to be considered a Complainant, they need NOT file either a Report of Sexual Harassment, nor a Formal Complaint of Sexual Harassment.
- In cases where the Title IX Coordinator signs a Formal Complaint of Sexual Harassment (and not the victim), the Title IX Coordinator is NOT considered a “Complainant.”

Title IX Policy, Section II. B.

Respondent - Definition

- Means an individual who has been reported to be the individual accused (I.E. perpetrator) of conduct that could constitute sexual harassment as defined by Title IX.
- Title IX Policy, Section II. K.

FORMAL COMPLAINT OF SEXUAL HARASSMENT **NEW

FORMAL COMPLAINT OF SEXUAL HARASSMENT PROHIBITED BY TITLE IX – FORM

Formal Complaints of Title IX Sexual Harassment may be filed with the Title IX Coordinator in person, by mail, or by email and **must be** in writing. **ALL FIELDS on this form must be filled out.**

Complainant Name and Address: _____ (Name)
_____ (Street address)
_____ (Town/zip)
_____ Email _____ cellphone

(If Minor) Complainant Parent/Guardian Name(s): _____
_____ (street address)
_____ (Town/zip)
_____ Email _____ cellphone

Please describe (using additional sheets of paper if necessary) the incident(s) of sexual harassment:

Do you hereby request an investigation of the matter through the Title IX Grievance Process?

[] YES [] NO

Signature of Complainant: _____ Date: _____ OR OTHERWISE indicate whether the Complainant is filing complaint.

(If minor) Signature of Complainant Parent/Guardian: _____ Date: _____

“Formal Complaint of Sexual Harassment”

For purposes of Title IX, a **Formal Complaint of Sexual Harassment**:

CAN BE FILED BY EITHER:

- (a) the Complainant;
- (b) the Complainant’s parent/guardian;

OR

- (C) the Title IX Coordinator;

MODEL POLICY SECTION IV.B.

Timeliness of Complaint

- Although the District will initiate the Title IX Grievance Process regardless of when the Formal Complaint of Sexual Harassment is submitted, delays in reporting may significantly impair the ability of school officials to investigate and respond to the allegations.
- MODEL POLICY, Section IV.B.3.

Jurisdiction over Parties

- Although there is no time limit per se to filing a Formal Complaint of Sexual Harassment, Complaints may (OPTIONAL) be dismissed if either the Complainant or Respondent is no longer enrolled or employed by the District.
- MODEL POLICY, IV.B.4.

POLICY: Notification of Formal Complaint to Parties

Upon receipt of a Formal Complaint of Sexual Harassment, the District must provide the following written notice to the parties who are known:

1. Notice of the District's Title IX Grievance Process (Section IV), including any informal resolution process.
2. Notice of the allegations potentially constituting sexual harassment as defined by Section II.M., 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 as defined by Section II.M., and the date and location of the alleged conduct, if known.

Supplemental Notice Required Upon Change in Investigative Scope. If, in the course of an investigation the District decides to investigate allegations about the Complainant or Respondent that are not included in the original Notification, the District must provide simultaneous notice of the additional allegations to the parties whose identities are known.

3. The written notice must include 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 Title IX Grievance Process set forth in Section IV. of the Policy.
4. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney (who may be present during any Grievance proceeding, including any related meeting or proceeding). The District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
5. The written notice must inform the parties of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

POLICY SECTION IV.C.

Delivery of Copies and Notices. POLICY IV.A.3.

Except as specifically stated elsewhere in this Policy, for any document, information or material required to be delivered to a party or to a person assigned with responsibility under the Title IX Grievance Process, the manner of transmittal may be by electronic mail, regular mail or such other manner reasonably calculated to assure prompt delivery with evidence thereof (such as a commercial carrier or other receipted delivery).

Hand delivery will only be permitted if made to the District official charged with the specific function under this Policy (e.g., Title IX Coordinator, Superintendent, investigator, decision maker(s), etc.).

Any document required to be delivered to a minor or other non-eligible student, must also be delivered to the minor's parent/guardian. Copies should also be sent to a party's advisor if the information for the advisor has been previously communicated to the sending party.

Under federal regulations, copies of the investigative evidence, as well as the investigative report, must be forwarded to a party's advisor.

You got a FORM LETTER for that???

- Yes! In fact, there are two kinds....
- While largely identical, you should distinguish in your Letter of Notification between cases in which a Formal Complaint of Sexual Harassment has been received by the Title IX Coordinator (as filed by the Complainant), and where the Title IX Coordinator has chosen to file the Formal Complaint of Sexual Harassment (and the Complainant has NOT filed).
- You should consider whether the case is appropriate for Informal Resolution, and if so, announce that option in the letter.
- You should attach a copy of the Policy for their information.

Letter - Notification of Receipt of Formal Complaint 1/6

RE: Notification of Receipt of Formal Complaint of Sexual Harassment

I am writing to inform you that I, in my role as Title IX Coordinator, have received a Formal Complaint of Title IX Sexual Harassment.

The allegations raised potentially constitute sexual harassment as prohibited by Title IX, specifically:

- (1)[INSERT HERE the identities of the parties involved in the incident (if known)];**
- (2) [INSERT HERE a description of the conduct allegedly constituting sexual harassment as defined by Section II.M. of the Policy]; a**
- (3) [INSERT HERE the date and location of the alleged conduct (if known)].**

I am also enclosing for your reference the District's Policy for the Prevention of Sexual Harassment as Prohibited By Title IX ("Policy"). With the filing of a Formal Complaint, the Title IX Grievance Process has been activated as set forth in Section IV. of that Policy.

Letter -Notification of Filing of Receipt of Formal Complaint 2/6

Party Protections

You are entitled, throughout the Grievance Process and Sexual Harassment Investigation to an advisor of your choice, who may be, but is not required to be an attorney, and who may be present during any Grievance proceeding, including any related meeting. (Please note that the District may establish restrictions regarding the extent to which your advisor may participate in the proceedings, so long as those restrictions apply equally to both Complainant and Respondent.) Please know that in this process the Respondent is presumed not responsible for the alleged conduct. A determination regarding responsibility shall only be made at the conclusion of the Title IX Grievance Process as set forth in Section IV. of the Policy, which will follow a Sexual Harassment Investigation, and be decided upon a preponderance of the evidence standard. Please be also advised that throughout this process all parties are protected from acts of retaliation. (Please see Policy Section II.L. for the definition of Retaliation). Please let me know immediately if you believe at any time that you have been subject to any acts of retaliation.

Letter -Notification of Filing of Receipt of Formal Complaint 3/6

Sexual Harassment Investigation

The Title IX Grievance Process will involve a Sexual Harassment Investigation and include:

- 1.an objective review of relevant evidence including inculpatory and exculpatory evidence;
- 2.an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- 3.no restrictions on either party to discuss the allegations under investigation nor to gather and present relevant evidence;
- 4.provide the parties with the same opportunities to have others present during any interview or other part of the investigation, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of your choice;
- 5.provide to parties whose participation is invited or expected 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;
- 6.provide 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 the Formal Complaint of Sexual Harassment, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source; so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation;
- 7.provide parties an electronic or hard copy of the evidence, and an opportunity to respond to that evidence in writing, for the investigator to consider prior to the completion of the investigator's report;
- 8.a written Sexual Harassment Investigation Report, a copy of which shall be provided to both parties and each party's advisor, if any, and an opportunity for both parties to submit a written response to that report.
- 9.Thereafter the Investigation Report will be provided to the Initial Decision-Maker who shall make an Initial Determination of Responsibility, by applying a preponderance of the evidence standard to the case.
- 10.Thereafter each Party may be entitled to an appeal as set forth in the Policy, Section IV.H.

For a complete listing of rights and procedures connected with the Grievance Process and Investigation, please refer to Section IV of the Policy.

Letter - Notification of Filing of Receipt of Formal Complaint 4/6

[IF YOUR DISTRICT/SCHOOL HAS A POLICY OR PROVISION WITHIN THE STUDENT CODE OF CONDUCT PROHIBITING FALSE STATEMENTS YOU MUST INFORM THE PARTIES OF THE EXISTENCE OF THOSE POLICIES OR CODES OF CONDUCT HERE AND PROVIDE A REFERENCE TO THAT POLICY OR CODE OF CONDUCT BY NAME OR NUMBER: “In addition please be advised that (INSERT DESCRIPTION OF THOSE POLICIES OR RULES....)”]

Letter - Notification of Filing of Receipt of Formal Complaint 5/6

[IN CASES NOT INVOLVING ALLEGATIONS OF SEXUAL HARASSMENT OF A STUDENT BY AN EMPLOYEE THE DISTRICT MAY (BUT IS NOT REQUIRED TO) OFFER TO THE PARTIES INFORMAL RESOLUTION. IF THE DISTRICT DOES NOT WISH TO OFFER IT, OR THE CASE INVOLVES ALLEGATIONS AGAINST AN EMPLOYEE FOR HARASSMENT OF A STUDENT, SKIP THIS SECTION:]

Option of Informal Resolution

Section IV. D. of the Policy also provides that at any time prior to the reaching of a determination regarding responsibility (but only after the Filing of a Formal Complaint), the District may offer an optional informal resolution process. The District is offering this option to you in this case [OPTION to insert here any particular form(s) of resolution process District is making available in this case]. Please know that your acceptance of this option is NOT a condition of your [CHOOSE THE APPROPRIATE OPTION OF EITHER: continuing employment with the District OR continuing enrollment with the District] and that by agreeing to Informal Resolution you will not waive your right to a Sexual Harassment Investigation. At any time prior to agreeing to an informal final resolution either party has the right to withdraw from the informal resolution process and resume the Grievance Process with respect to the Formal Complaint. Please know that depending upon the outcome of the Informal Resolution process, records of this process may be maintained by the District. The process may only be employed if both parties agree. Any agreement by you to pursue Informal Resolution must be in writing – accordingly a form is attached for that purpose.]

Letter - Notification of Filing of Receipt of Formal Complaint 6/6

An Investigator will be assigned to conduct the Sexual Harassment Investigation. Please let me know the identity and contact information of any advisor you have selected to work with you through this process so that they may be included on future contact by either myself or the Investigator.

Thank you for your anticipated cooperation through this process. Please let me know if you have any questions.

Sincerely,

NAME

District Title IX Coordinator

Enclosures: Policy For the Prevention of Sexual Harassment as Prohibited by Title IX

[OPTIONAL Form – Consent to Informal Resolution (ONLY IN CASES WHERE IT IS BEING OFFERED)]

“INFORMAL RESOLUTION” – MODEL POLICY IV.D.

At any time prior to reaching a determination regarding responsibility (but only after the filing of a formal complaint), the District may offer an optional informal resolution process (e.g., mediation, arbitration), provided that the District:

1. 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 a Sexual Harassment Investigation of a Formal Complaint of Sexual Harassment, such as may occur through Informal Resolution;
2. May not offer an informal resolution process unless a Formal Complaint of Sexual Harassment is filed;
3. Provides written notice to the parties disclosing:
 - a) The allegations of the Formal Complaint of Sexual Harassment;
 - b) 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 an informal final 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
 - c) Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
4. Obtains the parties' voluntary written consent to the informal resolution process; and
5. **Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.**

Informal Resolution Process Facilitators (“Facilitators”) / Policy Section V.E.

1. Conflict of Interest or Bias. Any individual assigned to facilitate an informal resolution process shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

2. Responsibilities. Facilitators shall be responsible for facilitating a process of informal resolution as permitted in section IV. D. above.

FORM - CONSENT TO INFORMAL RESOLUTION 1 of 3

Section IV. D. of District's Policy for the Prevention of Sexual Harassment as Prohibited by Title IX provides that at any time prior to the reaching of a determination regarding responsibility (but only after the Filing of a Formal Complaint), the District may offer an optional informal resolution process. **The District is offering this option to you in this case.**

Rights of Parties Regarding Informal Grievance Process

Please know that acceptance of this option is not a condition of your continuing enrollment OR employment with the District.

Please know that acceptance of this option does NOT waive your right to a Sexual Harassment Investigation of a Formal Complaint of Sexual Harassment, unless you specifically agree to do so as part of any agreement reached separately during the Informal Resolution process.

FORM - CONSENT TO INFORMAL RESOLUTION 2 of 3

Please know that participation in the Informal Resolution process may result in the creation of records of that process and its outcome, depending upon the terms of any agreement reached. If you participate but no agreement is reached, a record that the process was agreed to and was conducted, but not the content of those discussions, will be maintained by the District.

Any agreement by you to pursue Informal Resolution must be in writing – accordingly this form is attached for your convenience. The Informal Resolution process may only be employed if both parties – Complainant and Respondent - agree.

Both parties retain the right to withdraw their agreement to pursue informal resolution at any time prior to reaching a resolution.

FORM - CONSENT TO INFORMAL RESOLUTION 3 of 3

By my signature below I attest that I have read this entire form and am agreeing to pursue Informal Resolution. I understand that my continued enrollment (if a student) or employment (if an employee) is NOT conditioned upon my agreement to participate in Informal Resolution.. I understand that by agreeing to pursue Informal Resolution I do NOT waive my right to an Investigation of Sexual Harassment. I understand I can withdraw this agreement at any time.

_____ (Signature)

PRINTED FULL NAME (Student/Employee)

Date

_____ (Signature)

PRINTED FULL NAME (Parent/Guardian)

Date

(Where student is a minor).

Who else can file a **Formal Complaint of Sexual Harassment**?

For purposes of Title IX, **a Formal Complaint of Sexual Harassment CAN BE FILED BY EITHER:**

- (a) the Complainant;
- (b) the Complainant's parent/guardian;

OR

(C) the Title IX Coordinator;

MODEL POLICY SECTION IV.B.

LETTER – Notification of Filing of Formal Complaint

RE: Notification of Filing of Formal
Complaint of Title IX Sexual Harassment

Dear **[INSERT RESPONDENT OR COMPLAINANT NAME]:**

I am writing to inform you that I, in my role as Title IX Coordinator, have chosen to File a Formal Complaint of Title IX Sexual Harassment in order to ensure District compliance with its obligations under its Policy for the Prevention of Sexual Harassment as Prohibited by Title IX.

The allegations raised potentially constitute sexual harassment as prohibited by Title IX, specifically:

- (1)[INSERT HERE the identities of the parties involved in the incident (if known)];**
- (2) [INSERT HERE a description of the conduct allegedly constituting sexual harassment as defined by Section II.M. of the Policy]; a**
- (3) [INSERT HERE the date and location of the alleged conduct (if known)].**

I am also enclosing for your reference the District's Policy for the Prevention of Sexual Harassment as Prohibited By Title IX ("Policy"). With the filing of a Formal Complaint, the Title IX Grievance Process has been activated as set forth in Section IV. of that Policy.

[THE REST OF THE LETTER IS THE SAME AS THAT FOR NOTIFICATION OF 'RECEIPT' OF COMPLAINT on previous slides]

WHEN CAN THE T.9 COORDINATOR FILE?

POLICY: In cases where the COmplainant does NOT file a Formal Complaint of Sexual Harassment, the Title IX Coordinator MAY nevertheless CHOOSE TO SIGN and initiate a Formal Complaint of Harassment, but ONLY IF:

- i. initiating the grievance process against the Respondent is not clearly unreasonable in light of the known circumstances;
- ii. In other cases where, in the exercise of good judgment and in consultation with the District's attorney as appropriate, the Title IX Coordinator determines that a grievance process is NECESSARY to COMPLY with the obligation not to be DELIBERATELY INDIFFERENT to Actual Knowledge of sexual harassment.

Once filed, can a Complaint ever be “dismissed” or dropped??

- Yes, but only under very specific circumstances.

When MUST Complaint be “Dismissed?”

The District must (read: MANDATORY, i.e., no choice) dismiss a formal complaint with regard to Title IX sexual harassment **if the alleged conduct:**

- a. Would not constitute “sexual harassment”, even if proved;
- b. Did not occur in the District’s education program or activity; or
- c. Did not occur against a person in the United States.

MODEL POLICY, IV.G.1.

When MUST Complaint be “Dismissed?”

The District must dismiss a formal complaint with regard to Title IX sexual harassment **if the alleged conduct:**

a. **Would not constitute “sexual harassment”, even if proved;**

MODEL POLICY, IV.G.1.

IE: Incident does not constitute ‘assault’ ‘dating violence’ ‘stalking’ OR ‘domestic violence’ ; OR quid pro quo harassment; OR unwelcome conduct so severe, pervasive and objectively offensive as to deny person equal access to educational program or activity of District.

When MUST Complaint be “Dismissed?”

The District must dismiss a formal complaint with regard to Title IX sexual harassment if the alleged conduct:

b. **Did not occur in the District’s education program or activity**; or
MODEL POLICY, IV.G.1.

Example: Incident happened at a private home during a private event over the weekend.

When MUST Complaint be “Dismissed?”

The District must dismiss a formal complaint with regard to Title IX sexual harassment if the alleged conduct:

c. **Did not occur against a person in the United States.**

MODEL POLICY, IV.G.1.

Example: Incident happened during a class trip in the Dominican Republic.

When MAY a Complaint be “Dismissed?” (“Discretionary Dismissal”)

The District MAY (OPTIONAL – YOU HAVE A CHOICE) dismiss a formal complaint with regard to Title IX sexual harassment if at any time during the investigation or determination of responsibility stage(s):

- a. A 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 recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

MODEL POLICY, IV.G.2.

When MAY a Complaint be “Dismissed?” (IE: Discretionary Dismissal)

The District may dismiss a formal complaint with regard to Title IX sexual harassment if at any time during the investigation or determination of responsibility stage(s):

a. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;

MODEL POLICY, IV.G.2.

When MAY a Complaint be “Dismissed?” (IE: Discretionary Dismissal)

The District may dismiss a formal complaint with regard to Title IX sexual harassment if at any time during the investigation or determination of responsibility stage(s):

b. The respondent is no longer enrolled or employed by the District;
MODEL POLICY, IV.G.2.

When MAY a Complaint be “Dismissed?” (IE: Discretionary Dismissal)

The District may dismiss a formal complaint with regard to Title IX sexual harassment if at any time during the investigation or determination of responsibility stage(s):

c. Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

MODEL POLICY, IV.G.2.

Such as?

PROCESS OF DISMISSAL

Upon dismissal of a formal complaint, the District must promptly send written notice of the dismissal **and the reason(s)** therefore simultaneously to the parties.

MODEL POLICY, IV.G.3.

OK....so do you have a form for that?

4

INSTRUCTIONS: IDENTICAL BUT SEPARATE LETTERS SHOULD BE SENT SIMULTANEOUSLY TO COMPLAINANT AND RESPONDENT.

RE: Notice of Mandatory Dismissal of Formal Complaint of Title IX Sexual Harassment

DEAR [INSERT NAME OF RECIPIENT]:

I am writing to you in my position as [**CHOOSE ONE: District – or – Building Based**] Title IX Coordinator to inform you I have Dismissed a Formal Complaint of Sexual Harassment in which you were party as [**CHOOSE ONE: Complainant or Respondent**].

Statement of Basis of Dismissal

Pursuant to the Policy for the Prevention of Sexual Harassment as Prohibited by Title IX, the District **must** dismiss any Formal Complaint of Title IX Sexual Harassment in any of the following circumstances:

- a. When the alleged conduct, even if proved, would not constitute sexual harassment;
 - b. When the alleged conduct, even if proved, did not occur in the District's education program or activity;
- OR**
- c. When the alleged conduct, even if proved, did not occur against a person in the United States.

In this case the District finds that the alleged conduct [**YOU MUST INSERT WHICH ONE OF the reasons listed above applies in this case with a brief explanation**]. Therefore the District must dismiss the Formal Complaint of Sexual Harassment in this matter.

Statement of Ongoing District Obligations

Please note that the dismissal of a Formal Complaint under Title IX does not preclude the District from continuing any investigation or taking action under other District policies, code of conduct or administrative rules/regulations. In some cases, the District may have an obligation to continue an investigation and proceed under a different policy or mandated process. **[IF YOU KNOW THE CASE WILL NEED TO BE CONTINUED UNDER ANOTHER DISTRICT POLICY (such as for example, under Vermont’s HHB Policy and Procedures) YOU SHOULD ANNOUNCE THAT IN THIS LETTER and forward a copy of the applicable policy/procedures with the letter.]**

Statement of Appeal Rights

Either party may appeal a dismissal of a Formal Complaint of Sexual Harassment. The Policy for the Prevention of Harassment Prohibited by Title IX provides that a dismissal of Formal Complaint may be appealed on ANY one of the following basis:

- a. A procedural irregularity affected the outcome of the matter;
- b. The availability of new evidence - that was not reasonably available at the time the determination regarding dismissal was made - that could affect the outcome of the matter;
- c. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally that affected the outcome of the matter; OR
- d. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against the individual complainant or respondent that affected the outcome of the matter.

If you wish to seek an appeal, for your convenience I have attached a form titled "Request for Appeal." Please note that if you choose to appeal you must file your notice of appeal with the Superintendent in writing, with a copy to the Title IX Coordinator, no later than **[INSTRUCTIONS: INSERT DEADLINE DATE which MUST PROVIDE THEM AT LEAST 10 DAYS FROM THE ANTICIPATED DATE OF RECEIPT OF YOUR LETTER BY THE RECIPIENT].**

LETTER –NOTIFICATION OF MANDATORY DISMISSAL OF FORMAL COMPLAINT OF 4 01 4

[IF SUPPORTIVE MEASURES WILL REMAIN IN PLACE FOR THE PARTY TO WHOM YOU ARE WRITING (EITHER THE COMPLAINANT OR RESPONDENT) YOU SHOULD REMIND THEM OF THOSE AGAIN.

Supportive Measures

Please know that the following supportive measures, set in place by the District shall remain in place as follows:

EXPLAIN THOSE MEASURES

If you have any questions about the above please do not hesitate to contact me.]

Thank you for your cooperation throughout the process as we seek to make our school safe and accessible for all. Please feel free to contact me with any questions.

Sincerely,

Tye-Tell Nein

Title IX Coordinator

cc: Grievance Process File

What if you dismiss the case but there are still separate reasons to pursue VT HHB?

- If the reasons for your dismissal do NOT affect the VT HHB allegations, you MAY need to continue under the VT HHB process and complete that investigation.

IMPACT OF DISMISSAL

The dismissal of a formal complaint under Title IX does not preclude the District from continuing any investigation or taking action under other District policies, code of conduct or administrative rules/regulations. In some cases, the District may have an obligation to continue an investigation and proceed under a different policy or mandated process.

MODEL POLICY IV.G.4.

COMPLAINT/Intro

RE: Notice of Discretionary Dismissal of Formal Complaint of Title IX Sexual Harassment

DEAR [INSERT NAME OF RECIPIENT]

I am writing to you in my position as [CHOOSE ONE: District – or – Building Based] Title IX Coordinator to inform you I have Dismissed a Formal Complaint of Sexual Harassment in which you were party as [CHOOSE ONE: Complainant or Respondent].

Statement of Basis of Dismissal

Pursuant to Section IV.G.2. of the Policy for the Prevention of Sexual Harassment Prohibited by Title IX, the District has the option to Dismiss a Formal Complaint of Sexual Harassment if at any time during either the investigation or determination of responsibility stage(s):

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

In this case the District finds that [(YOU MUST INSERT WHICH ONE OF the reasons listed above applies in this case with a brief explanation)]. Therefore the District has chosen to dismiss the Formal Complaint in this matter.

THE REST OF THE LETTER IS IDENTICAL TO THE LETTER - NOTIFICATION OF MANDATORY DISMISSAL OF FORMAL COMPLAINT.

Consolidation of Complaints.

- The District may consolidate formal complaints of allegations of sexual harassment where the allegations of sexual harassment arise out of the same facts or circumstances and the formal complaints are against more than one respondent; or by more than one complainant against one or more respondents; or by one party against the other party. When the District has consolidated formal complaints so that the grievance process involves more than one complainant or more than one respondent, references to the singular “party”, “complainant”, or “respondent” include the plural, as applicable.
- MODEL POLICY, IV.B.6.

SCOPE CHANGE

- Supplemental Notice Required Upon Change in Investigative Scope. If, in the course of an investigation the District decides to investigate allegations about the Complainant or Respondent that are not included in the original Notification, the District must provide simultaneous notice of the additional allegations to the parties whose identities are known.
- MODEL POLICY, IV.C.2.a.

V. GRIEVANCE PROCESS / INVESTIGATION OF SEXUAL HARASSMENT COMPLAINT

Investigators. Policy Section V.C.

1. Conflict of Interest or Bias. Any individual assigned to investigate a Formal Complaint of Sexual Harassment shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
2. Responsibilities. Investigators shall be responsible for conducting Sexual Harassment Investigations as set forth in MODEL POLICY Section IV.E.

WHO MAKES THE ASSIGNMENT? “The Title IX Coordinator shall designate a qualified, trained, person to investigate.” Model Policy, Section IV.E.

Grievance Process Protections For Equitable Treatment / POLICY IV.A.2.a-c

a) **“Presumption of Non Responsibility”** presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Title IX Grievance Process;

b) **“Objectivity”** an objective evaluation of all relevant evidence - including both inculpatory and exculpatory evidence - and provide that credibility determinations may not be based on a person’s status as a Complainant, Respondent, or Witness;

c) **“Conflict and Bias Free Personnel”** that individuals designated by the District to act as Title IX Coordinator, investigator, decision-makers, or to facilitate an informal resolution process, shall have no conflict of interest nor bias for or against a Complainant or Respondent individually, or complainants or respondents generally;

Grievance Process Protections For Equitable Treatment / POLICY IV.A.2.d

d) “No Interference with Legal Privileges” such that at no point in the grievance process will the Title IX Coordinator, the investigator, any decision maker, or any other person participating on behalf of the District, require, allow, rely upon, or otherwise use questions or evidence that constitutes, or seeks disclosure of, information protected under a legally recognized privilege (e.g., doctor/patient, attorney/client, clergy, etc.), unless the person holding such privilege (parent/guardian for minor student) has waived the privilege in writing to use the information with respect to the Title IX Grievance Process;

Grievance Process Protections For Equitable Treatment / POLICY IV.A.2.e

e) **“Proof of Responsibility for Sexual Harassment by a Preponderance of the Evidence,”** which is only met when the party with the burden convinces the fact finder (the Initial Decision- Maker) that there is a greater than 50% chance that the claim is true (i.e., more likely than not). This standard shall be applied to all Formal Complaints of Sexual Harassment, whether they involve students or faculty;

Grievance Process Protections For Equitable Treatment / POLICY IV.A.2.f

f) “Reasonably Prompt Time Frames for Conclusion of the Title IX Grievance Process.” The District shall make a good faith effort to conduct a fair, impartial grievance process in a reasonably prompt manner designed to provide all parties with a prompt and equitable resolution. It is expected that in most cases, the grievance process will be concluded - through at least the determination of responsibility decision - within 80 days after filing the Formal Complaint of Sexual Harassment. However, more complex cases or other case specific circumstances, may require additional time beyond that timeframe. In such cases, good cause must be shown and written notice provided.

Grievance Process Protections For Equitable Treatment / POLICY IV.A.2.f

f) “Reasonably Prompt Time Frames for Conclusion of the Title IX Grievance Process.” (continued)

1. Grievance Process Timeline.

- a. Investigation 20 +/- days (as the complexity of the case demands);
- b.10 days for reviewing information prior to conclusion of investigation;
- c.10 days after receiving investigative report -by either- party to respond;
- d.10 days for decision maker to allow initial questions;
- e.10 days for responses to questions;
- f.10 days for questions and responses to follow-up questions;
- f.10 days for determination of responsibility decision;
- g.10 days for appeal (6 additional days for administrative steps);
- h.10 days for argument/statement challenging or supporting determination;
- i.10 days for decision on appeal.

Grievance Process Protections For Equitable Treatment / POLICY IV.A.2.f

f) “Reasonably Prompt Time Frames for Conclusion of the Title IX Grievance Process.” (continued)

2. Delays and Extensions of Time. At any stage of the grievance process, the District (through the Superintendent, or if the Superintendent is the respondent, the Title IX Coordinator or designee) may for good cause allow for temporary delays or extensions of time upon request of either party, or on his/her own initiative. Examples of good cause may include such things as availability of parties, party advisors, witnesses, school or school administrative office holidays or vacations, referral back to an earlier stage of the grievance process, concurrent law enforcement or other agency activity, or need to obtain language interpreters or accommodation of disabilities. For any such delay or extension of time, the Superintendent or the Title IX Coordinator will provide simultaneous written notice to the parties of the delay/extension and the reason(s).

Title IX Investigation Requirements: (1 of 6)

1. Include objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence. (Evidence about the complainant's sexual predisposition or prior sexual behavior are **not** relevant, unless such evidence about the complainant's prior sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is offered to prove consent.)

MODEL POLICY, SECTION IV.E.1.

Title IX Investigation Requirements: (2 of 6)

2. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the District and not on either of the parties;
3. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
4. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

MODEL POLICY, SECTION IV.E.2-4.

Title IX Investigation Requirements: (3 of 6)

5. Provide the parties with the same opportunities to have others present during any interview or other part of the investigation, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. The District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;

6. Provide, to a party (e.g., Respondent or Complainant – and parent/guardian as appropriate) whose participation is invited or expected, 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;

- MODEL POLICY, SECTION IV.E.5-6.

LETTER – Notification of Interview and Protections 1/6

DEAR [INSERT NAME OF RECIPIENT]:

I am writing to you in my role as the investigator assigned to conduct a Sexual Harassment Investigation in which you are a [**CHOOSE ONE: Complainant OR Respondent**], and to request an interview with you regarding the allegations made in this case. This letter shall serve as your prior written notice of that interview so that you may have sufficient time to prepare for your participation. I will also briefly outline some important protections afforded you throughout the investigative process.

Interview Arrangements and Purposes

I propose that your interview be conducted [**INSERT THE PROPOSED DATE, TIME, LOCATION/MANNER OF INTERVIEW IF VIA TECHNOLOGY. IT WOULD BE BEST IF YOU OFFERED A FEW DATES**]. If this date does not work for you, I would ask that you get back to me promptly with proposed dates and times.

Please know that you are entitled to have the advisor of your choice participate in this interview. Please let me know in advance if you will be having an advisor attend your interview with you.

LETTER – Notification of Interview and Protections 2/6

Please know that the purpose of the interview will be to review with you:

- a) the allegations in this case in detail and to give you a chance to tell your side of the story;
- b) any evidence (inculpatory or exculpatory) that you wish to share with me and/or to supply to me during your interview;
- c) the identities of any witnesses (fact or expert) whom you believe would have relevant information and whom you would like me to interview.

LETTER – Notification of Interview and Protections 3/6

Equitable Protections

Please know that I will be presuming in this matter that the Respondent is NOT responsible for the alleged conduct. A determination regarding responsibility is only made at the conclusion of the Grievance Process, of which the investigation is only a part. Investigators do not make determinations of responsibility. Those are made separately after the investigation is completed by first the Initial (and in some cases thereafter by the Appellate) Decision Makers. Those decisions are made by an objective evaluation of all relevant evidence, and proof of responsibility based on a “preponderance of the evidence*” standard. Additionally, credibility determinations may not be made on the basis of a person’s status as a Complainant Respondent or Witness. The burden of proof and of gathering evidence sufficient to reach a determination regarding responsibility in these cases rests on the District, and not on either party.

**“Preponderance of the evidence” is a standard of evidence met only when there party with the burden – here the District – convinces the fact finder (the Initial Decision Maker) that there is a greater than 50% chance that the claim is true (i.e. more likely than not).*

LETTER – Notification of Interview and Protections 4/6

Time Frames

I will, in the course of my work, make a good faith effort to conduct a fair, impartial investigation in a reasonably prompt manner designed to provide all parties with a prompt and equitable resolution. The time frame for the investigative and decision making process in these cases can take up to 80 days. (Please See Policy, Section IV. A.2.f.1.) However, more complex cases or other case specific circumstances may require more, or less, time. In cases of delays and extensions of time, I will provide you with written notice of that fact.

LETTER – Notification of Interview and Protections 5/6

Party Presentation of Evidence & Protections From Retaliation

As stated above, I am happy to receive any relevant evidence from you that you would like me to collect and review in the course of my investigation. In order that you may do so you are not expressly prohibited from discussing the allegations under investigation to gather and present relevant evidence**. Any such activities, however, must be conducted in such a way so as not to be disruptive to the educational environment.

In addition, all parties, and potential witnesses, are protected from acts of retaliation by the school's policies. Title IX expressly prohibits acts of retaliation which are defined in relevant part as *"intimidation, threats, coercion, or discrimination by ...any other person, against any individual for the purpose of interfering with any right or privilege secured by Title IX and/or this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing in connection with this Policy."* If you believe that you have been subject to any behaviors which may constitute retaliation please immediately contact Title IX Coordinator [**IDENTIFY THEM BY THEIR NAME**].

***By federal regulation evidence about the Complainant's sexual predisposition or prior sexual behavior are **not relevant**, unless such 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 the evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. POLICY Section IV. F.3.a.*

LETTER – Notification of Interview and Protections 6/6

I look forward to meeting with you. Please let me know if the proposed date(s) and time(s) for your interview will work, and if not please let me know some alternative date(s) and time(s). Please also let me know if your advisor of choice will be attending.

Please let me know if you have any questions.

Sincerely,

Title IX Investigator

Title IX Investigation Requirements: (4 of 6)

7. Provide 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 upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation;

8. **PRIOR to completion of the Sexual Harassment Investigative Report**, the District, through the Title IX Coordinator, must send to each party and 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;

- MODEL POLICY, SECTION IV.E.7-8.

LETTER – Notification of Opportunity To Review and Respond to Evidence

RE: Notice of Your Opportunity to Review and Respond to Evidence

DEAR **[INSERT NAME OF RECIPIENT]**:

I am writing in my capacity as Title IX Investigator to review and respond to the evidence that I have gathered in the course of my investigation that is directly related to the allegations raised in the Formal Complaint, and as set forth in Policy Section IV.E.7 and 8. A complete copy of that evidence is attached **[EITHER ATTACH AN ELECTRONIC OR HARD COPY]** for your review. Please be advised these materials relate to a confidential matter. These materials are to be used solely in connection with the Title IX Grievance Process, but may not otherwise disseminated or disclosed.

If you would like to submit a written response to any of this evidence please provide that to me via **[insert your preferred manner of delivery here]** and do so no later than **[INSERT DEADLINE DATE which MUST PROVIDE at least 10 days FROM THE ANTICIPATED DATE OF RECEIPT OF YOUR LETTER BY THE RECIPIENT]**.

Please let me know if you have any questions.

Sincerely,
Title IX Investigator

Enclosure: Title IX Investigation Evidence Packet

Cc: Title IX Coordinator

Title IX Investigation Requirements: (5 of 6)

9. **Prepare a written Sexual Harassment Investigative Report** that fairly summarizes
- relevant evidence, including, without limitation, witness credibility, discrepancies, inculpatory and exculpatory information,
 - and relevant District policies, rules and regulations, and the manner in which the same were made known to the pertinent school populations or specific parties.

The investigative report shall include a description of the procedural steps taken

- starting with the receipt of the formal complaint,
- and continuing through the preparation of the investigative report,
- including any notifications to the parties, interview with parties and witnesses, site visit, and methods used to gather evidence.

MODEL POLICY, SECTION IV.E.9.

Title IX Investigation Requirements: (6 of 6)

10. The investigator shall provide the Investigative Report in hard copy or electronic format to the Title IX Coordinator, to each party and each party's advisor, if any. Each party will have 10 days from receipt to provide the Title IX Coordinator a written response to the Investigative Report.

MODEL POLICY, SECTION IV.E.10.

LETTER-Notification of Opportunity to Review & Respond to Sexual Harassment Report

I am writing in my capacity as Title IX Investigator to provide you with a copy of my Title IX Sexual Harassment Investigative Report (“Report”). A copy of that Report is attached for your review, as required by Policy Section IV.E.10.

You are entitled to submit a written response to this Report. Please forward any such response directly to the Title IX Coordinator no later than **[INSERT DEADLINE DATE which MUST PROVIDE THEM AT LEAST 10 DAYS FROM THE ANTICIPATED DATE OF RECEIPT OF YOUR LETTER BY THE RECIPIENT]**. These materials relate to a confidential matter. These materials are to be used solely in connection with the Title IX Grievance Process, but may not otherwise be disseminated or disclosed.

This concludes my work in this matter. An Initial Decision Maker will be assigned by the Title IX Coordinator in this case and will contact you directly regarding next steps in the Grievance Process as outlined in Policy Section IV.E.

Thank you for your cooperation in this matter.

Sincerely,
Title IX Investigator

cc: Title IX Coordinator

Encl: Title IX Investigation Evidence Packet **[EITHER ATTACH AN ELECTRONIC OR HARD COPY]**

This concludes the Investigator's Work

NEXT STEPS IN GRIEVANCE PROCESS BY: **INITIAL DECISION MAKER**

Initial Decision Maker – Assigned by Title IX Coordinator

Opportunity for Relevant Party Questions

Written Initial Determination Regarding Responsibility

SECTION VI. GRIEVANCE PROCESS - INITIAL DETERMINATION OF RESPONSIBILITY

FOUR STAGES OF GRIEVANCE PROCESS

FILING OF FORMAL COMPLAINT

Party Notification

Dismissal

Offer of Informal Resolution

Investigator Assigned

INVESTIGATION

INITIAL DECISION

By initial decision maker.

APPELLATE DECISION

(If appealed)
By Appellate Decision Maker

ASSIGNMENT: Initial Decision-Maker

The Policy is silent as to who makes the assignment, but the Title IX Coordinator is charged with managing the Grievance Process and so likely is best suited to make this assignment.

Limits on WHO can Serve?

POLICY Section IV.F.1. “The Initial Decision-Maker cannot be the same person(s) as the Title IX Coordinator or the Investigator(s).”

Conflict of Interest or Bias. Any individual assigned as a Decision-Maker in the case of a Sexual Harassment under this Policy shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Section V.D. (1)

Responsibilities.

Initial Decision-Makers shall be responsible for issuing an Initial Determination Regarding Responsibility following a Sexual Harassment Investigation and other duties set forth in Section IV.F. above. Section V.D. (2)

Opportunity for Party's (and Advisors) to Respond to Questions Posed by Opposing Party

TWO STEP PROCESS

b. Written Responses to Questions. The Initial Decision-Maker will provide the questions to the party/witness, with copies to each party, and provide no less than 10 days for written responses, likewise to be provided to each party.

c. Opportunity for Limited Supplemental Questions. The Initial Decision-Maker will provide 5 days each for supplementary, limited follow-up questions and 5 days for answers, and may provide for additional rounds of follow-up questions, as long as the provision is extended to both parties equally.

Title IX Policy, Section IV.F.2.

Opportunity for Parties (and Advisors) to Pose Questions Following Receipt of Investigator's Report

At the conclusion of the investigation, and after having received the Investigator's Report...both parties (and their Advisors, if any) are provided

10 days to submit written, relevant questions to the Initial Decision-Maker that the party wants asked of any party or witness.

Only relevant questions may be posed.

LETTER – NOTIFICATION OF OPPORTUNITY FOR PARTY QUESTIONS (Sent by Initial Decision Maker)

I am writing to you in my capacity as the Initial Decision Maker assignment regarding a Formal Complaint of Sexual Harassment in which you are a [CHOOSE ONE: Complainant/Respondent/Party Advisor].

I am in receipt of the Investigator's Report, and each Party's written response to that report (if any were submitted).

At this point in the Grievance Process you are entitled to pose questions to the opposing party – through me – that are relevant to the Formal Complaint of Harassment. Please note that pursuant to the Policy, “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 question and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.” Any question that I deem to be “irrelevant” will not be posed. Any questions submitted that I subsequently deem to be irrelevant will be excluded. I will provide an explanation of that decision to the party proposing the question.

Please submit your questions directly to me no later than **[INSERT DEADLINE DATE which MUST PROVIDE THEM AT LEAST 10 DAYS FROM THE ANTICIPATED DATE OF RECEIPT OF YOUR LETTER BY THE RECIPIENT]**.

Thank you for ongoing cooperation in this matter.

RELEVANT QUESTIONS?

a. Irrelevant Questions and Evidence. 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 question and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the respondent and are offered to prove consent."

Title IX Policy, Section IV.F.2.a.

What is relevance?

Concept from the Rules of Evidence: Rule 401

Evidence is relevant if it would make a fact more or less probable

or

The fact is of consequence in determining the action

Application of relevance rule

The fact is of consequence: Means that it goes to the essential elements of the sexual harassment. Not other bad things about the accused or good things about the complainant. Not other incidents involving the complainant or the accused.

Propensity evidence: Not allowed. Using prior acts to show actions in conformance with that past conduct. Example: Joe harassed Sally so that lends support to the allegation raised by Jane.

Essential facts include: defenses, like consent.

Tendency to make a fact more or less probable

Facts that do not go directly to the elements of the claim.

But, they may have important impact on testimony. For example, if the witness says that another witness was not in a position to see or hear. Not directly relevant, but goes to the weight given to the testimony.

If there are experts involved in the case, their opinions may rely on facts that seem wholly unrelated to the central issues. Ex: mental health and medical experts

Experts in Title IX decision making

Parties may submit expert materials--there is no limitation

The decision maker has not ability to compel more information from the expert

The report or other submission from the expert must be shared

The fact that one party will not share supporting data may undermine expert opinion

Expert opinions are only as accurate as the data and science on which they are based

Concepts of Direct Evidence and Hearsay-- How to Weigh Evidence

Hearsay: evidence offered that goes to the truth of the matter asserted but is based on what someone not testifying said.

Direct Evidence: I saw Jack sexually assault Jenny. (Really “probative” and not hearsay)

Example of hearsay:

A party submits an affidavit that says: “Hillary told me that Jack admitted that he sexually assaulted Jenny.”

Hearsay exception: “Jack told me he sexually assaulted Jenny”

LETTER – Notification of Rejected Party Question for Lack of Relevance

I am writing to you in my capacity as the Initial Decision Maker to inform you that I am rejecting your proposed Party Question for lack of relevance.

Your proposed Party Question [INSERT THE QUESTION VERBATIM HERE] is rejected as it is not relevant to the matter.

[INSERT HERE BRIEF EXPLANATION. IF THE QUESTION VIOLATES the Policy restriction for questions regarding Complainant sexual predisposition or prior sexual behavior, be sure to so state that reason here and CITE to Policy Section F.2.a. in your explanation.]

Sincerely,

Title IX Initial Decision Maker

cc: Title IX Coordinator

LETTER – Notification of Party Question

I am writing to you in my role as Initial Decision Maker and forwarding to you questions posed to the [CHOOSE ONE: Complainant/Respondent] in this matter and deemed relevant by me to a determination of responsibility regarding the Formal Complaint of Sexual Harassment.

[INSERT QUESTIONS HERE]

Please submit written responses, if any, directly to me, no later than **[INSERT DEADLINE DATE which MUST PROVIDE THEM AT LEAST 10 DAYS FROM THE ANTICIPATED DATE OF RECEIPT OF YOUR LETTER BY THE RECIPIENT]**.

Thank you for ongoing cooperation in this matter.

Sincerely,

Title IX Initial Decision Maker

cc: Title IX Coordinator

Opportunity for Party's (and Advisors) to Respond to Questions Posed by Opposing Party

TWO STEP PROCESS

b. Written Responses to Questions. The Initial Decision-Maker will provide the questions to the party/witness, with copies to each party, and provide no less than 10 days for written responses, likewise to be provided to each party.

c. Opportunity for Limited Supplemental Questions. The Initial Decision-Maker will provide 5 days each for supplementary, limited follow-up questions and 5 days for answers, and may provide for additional rounds of follow-up questions, as long as the provision is extended to both parties equally.

Title IX Policy, Section IV.F.2.

LETTER – NOTIFICATION OF OPPORTUNITY FOR SUPPLEMENTAL QUESTIONS

At this point in the Grievance Process you are entitled to **pose limited supplemental questions** to the opposing party – through me – that are relevant to the Formal Complaint of Harassment.

Please again note that pursuant to the Policy, “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 question and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.” Any question that I deem to be “irrelevant” will not be posed. Any questions submitted that I subsequently deem to be irrelevant will be excluded. I will provide an explanation of that decision to the party proposing the question.

Please submit your questions directly to me no later than **[INSERT DEADLINE DATE which MUST PROVIDE THEM AT LEAST 5 DAYS FROM THE ANTICIPATED DATE OF RECEIPT OF YOUR LETTER BY THE RECIPIENT]**.

Thank you for ongoing cooperation in this matter.

LETTER – NOTIFICATION OF PARTY SUPPLEMENTAL QUESTIONS

I am writing to you in my role as Initial Decision Maker and forwarding to you supplemental questions posed to you as the [CHOOSE ONE: Complainant/Respondent] in this matter and deemed relevant by me to a determination of responsibility regarding the Formal Complaint of Sexual Harassment.

[INSERT QUESTIONS HERE]

Please submit written responses, if any, directly to me, no later than **[INSERT DEADLINE DATE which MUST PROVIDE THEM AT LEAST 5 DAYS FROM THE ANTICIPATED DATE OF RECEIPT OF YOUR LETTER BY THE RECIPIENT]**.

Thank you for ongoing cooperation in this matter.

Sincerely,

NEXT STEP?

INITIAL DETERMINATION OF RESPONSIBILITY

DEADLINE:

WITHIN 10 days following the close of the period set for responses to the LAST round of follow-up questions, the Initial Decision Maker must issue a Written Initial Determination SIMULTANEOUSLY to:

- > Title IX Coordinator;**
- > the Superintendent; and**
- > the Parties (and their advisors, if any).**

GUIDELINES: Reaching Initial Determinations of Responsibility

HOW DOES THE INITIAL DECISION-MAKER make their determination?

Prohibition on Negative Inferences. The Initial Decision-Maker may not make any credibility determinations based on the person's status as a complainant, respondent or witness.

Presumption of Non-Responsibility. The Respondent must be deemed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Title IX Grievance Process.

In addition decisions shall be made based on the standard of evidence schools apply (either preponderance of the evidence or clear and convincing). The Model Policy proposes "preponderance of the evidence."

Title IX Policy, Section IV.F.3-4.

Preponderance of the Evidence/Clear and Convincing

two evidentiary concepts taken from the law--go to the burden of proof of a party asserting a claim

preponderance of the evidence is a common law concept for civil cases generally--every fact must be proven by more than 50%

Clear and convincing evidence lies somewhere between preponderance of the evidence and beyond a reasonable doubt--used for fraud claims

How do we apply a preponderance of the evidence

Title IX harassment has essential elements

The facts supporting each element (ex: 1. gender based; 2) unwelcome,; and 3) pervasive and severe) must be more likely true than untrue in order to support a finding

We do not focus on the allegations--some lesser or greater facts found might still satisfy all of the essential elements of sexual harassment under Title IX

Preponderance of the evidence is a more user friendly burden of proof and more easily understood by the parties

50/50 evidence is UNPROVEN

“Written Initial Determination of Responsibility”

Written Initial Determination. Applying the **preponderance of the evidence** standard, the Determination must include:

- a. Identification of the allegations potentially constituting Sexual Harassment as defined in this Policy, section II.M.;
- b. A description of the procedural steps taken from the receipt of the formal complaint through the Initial Determination Regarding Responsibility, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held;
- c. Findings of fact supporting the Written Initial Determination Regarding Responsibility;
- d. Conclusions regarding the application of the District’s applicable codes of conduct, policies, administrative regulations or rules to the facts;
- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility (i.e., whether or not the respondent is responsible for sexual harassment), 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 will be provided by the District to the Complainant ; and
- f. The District’s procedures and permissible bases for the Complainant and Respondent to appeal (as set forth in Section IV.H, below).

Title IX Policy, Section IV.F.5.

FORM: TEMPLATE – INITIAL DETERMINATION OF RESPONSIBILITY

- *COMING SOON!!*

LETTER – Notification of Initial Determination of Responsibility

I am writing to you in my role as Initial Decision Maker to forward to you a copy of my Initial Decision of Responsibility regarding the Formal Complaint of Sexual Harassment in which you are a [CHOOSE: Complainant /Respondent].

At this time my decision is an Initial Decision of Responsibility and is subject to appeal. Where no appeal is timely taken, on the date upon which an appeal would no longer be considered timely, my decision will become final, and identified thereafter as the Title IX Sexual Harassment Final Decision.

Either party may appeal the Initial Determination of Responsibility by notifying the Superintendent in writing (“written appeal”), with a copy to the Title IX Coordinator. If you wish to seek an appeal, for your convenience I have attached a form titled “Request for Appeal.” Please note that either party may only appeal the Initial Determination of Responsibility based upon one or more of the following grounds:

- 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; or
- c. The Title IX Coordinator, investigator(s), 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.

Please note that if you choose to appeal you must file your notice of appeal with the Superintendent in writing, with a copy to the Title IX Coordinator, no later than **[INSERT DEADLINE DATE which MUST PROVIDE THEM AT LEAST 10 DAYS FROM THE ANTICIPATED DATE OF RECEIPT OF YOUR LETTER BY THE RECIPIENT]**.

This concludes my responsibilities in this matter. Thank you for your cooperation throughout this process.

FORM – REQUEST FOR APPEAL

INSTRUCTIONS:

Either party may ONLY appeal the Initial Determination of Responsibility or the Dismissal of a Formal Complaint of Sexual Harassment (or any allegations therein) based upon one or more of the following grounds:

- a. Procedural irregularity that affected the outcome of the matter; AND/OR
- 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/OR
- c. The Title IX Coordinator, investigator(s), 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.

Please circle each of the above grounds upon which you wish to seek an appeal and describe below in detail (using additional sheets of paper if necessary). If you are appealing from an Initial Determination of Responsibility and there are multiple determinations of responsibility, specify which ones are included in your appeal.

-
- Do you hereby request an Appeal? YES NO
 - Signature of Complainant/Respondent: _____ Date: _____
 - (If minor) Signature of Complainant/Respondent Parent/Guardian: _____
Date: _____

SECTION VII.GRIEVANCE PROCESS - APPEAL OF INITIAL DETERMINATION OF RESPONSIBILITY

- APPELLATE PROCESS

Appellate Decision-Makers -WHO??

Appellate Decision-Maker. The **Appellate Decision-Maker** shall not be the same person as the **Initial Decision-Maker** that reached the determination regarding responsibility or the Dismissal of a Formal Complaint of Sexual Harassment, the Investigator(s) or the Title IX Coordinator. ***The Appellate Decision-Maker shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.*** The Appellate Decision-Maker shall be trained as set forth in section V.F.2. and 3.

5. District Notification of Appeal and Duty to Equitable Treatment of Parties During Appeal. The District must notify the both parties in writing when an appeal is filed and implement appeal procedures equally for both parties.

LETTER - Notification of Appeal of Initial Determination of Responsibility (FR: Supt.)

I am writing to inform you that I have received a request for Appeal of an Initial Determination of Responsibility regarding a Formal Complaint of Sexual Harassment in which you are a [CHOOSE ONE: Complainant/Respondent]. [INSTRUCTIONS: announce whether you will be acting as the Appellate Decision Maker in this case, OR announce who has been assigned to act as the Appellate Decision Maker].

Party Protections

During the pendency of the Appeal process both parties remain entitled to equitable treatment. In particular both parties are afforded an opportunity to brief the Appellate Decision maker in this case. Please note the following deadlines with respect to this opportunity which have been triggered by this Notification of Appeal.

Deadline in Cases of Newly Available Evidence. In cases where the basis of the appeal is claimed newly available evidence affecting the outcome, the party relying upon such evidence in support of their appeal shall submit to the Appellate Decision-Maker such evidence or a summary of such evidence along with the party's appeal statement **first** and by **[INSTRUCTIONS INSERT A DATE NO MORE THAN 7 days from the date of receipt of your letter]**. Thereafter the Appellate Decision-Maker shall then forward on such documentation to the opposing party, **whereupon the opposing party shall thereafter have an equal amount of time in which to review and submit their own Brief to the Appellate Decision-Maker.**

Cases With NO Newly Available Evidence. In such case, each party shall have **[INSTRUCTIONS INSERT A DATE NO MORE THAN 10 days from the date of your letter]** to submit a written statement in support of, or challenging, the Initial Determination Regarding Responsibility.

Thank you for your anticipated cooperation through this process. Please let me know if you have any questions.

LETTER - ADM - Forwarding of Party Brief in Case of Newly Available Evidence

Please find attached for your review and response the [Insert as appropriate Respondent/Complainant]'s brief in this appeal involving claims of newly available evidence.

Please submit a written statement in support of the Initial Determination Regarding Responsibility and your response, if any, to the newly available evidence no later than **[INSERT DATE 7 DAYS FOLLOWING RECEIPT OF THIS LETTER.]**

Thank you for your anticipated cooperation through this process. Please let me know if you have any questions.

Sincerely,

NAME

Appellate Decision Maker

CC: Title IX COORDINATOR

Written Determination of the Appeal IV.H.7.

7. Written Determination of the Appeal

The Appellate Decision-Maker shall provide a Written Determination of the Appeal after considering the record and the parties' appeal statements, describing the result of the appeal and the rationale of the result.

The **appeals decision maker will only overturn the Initial Determination of Responsibility upon a conclusion that it was clearly erroneous** (i.e., either made on unreasonable grounds, or without any proper consideration of the circumstances).

If the basis or one of the bases for the appeal was new evidence, the appeals decision maker may either make a determination of responsibility regarding that evidence or refer it back to the appropriate stage of the Title IX Grievance Process.

The Appellate **Decision shall be provided simultaneously to both parties**, with a copy to the Title IX Coordinator and the Superintendent of Schools.

LETTER - ISSUANCE OF WRITTEN DETERMINATION OF THE APPEAL

Written Determination of the Appeal IV.H.7.

7. Written Determination of the Appeal

- Upon issuance of the Written Determination of the Appeal, it becomes a **Title IX Sexual Harassment Final Decision**, as set forth in Section IV.F.6, with commensurate Title IX obligations for the District to act as set forth in Section IV.F.7.

Duty to Effectuate Title IX Sexual Harassment Final Decision IV.F.7.

7. District Response to Sexual Harassment.

Once a **Title IX Sexual Harassment Final Decision** is issued, the District may implement remedies as set forth in Section III.D. above, and action as necessary to **respond in a manner not deliberately indifferent** in light of the known circumstances in cases of a Determination of Title IX Sexual Harassment Final Decision concluding responsibility for Sexual Harassment.

VIII.POST GRIEVANCE PROCESS

- IMPLEMENTATION

Duty to Effectuate Title IX Sexual Harassment Final Decision IV.F.7.

SECTION III.D. District Duty to Respond When Determination of Responsibility For Sexual Harassment Has Been Made Against a Respondent.

The District must provide remedies to a Complainant where a determination of responsibility for sexual harassment has been made against a Respondent designed to restore or preserve equal access to the District's education program or activity. Such remedies may include “supportive measures” but also need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.”

DISCIPLINE MAY BE IMPOSED AT THIS POINT.

Duty to Effectuate Title IX Sexual Harassment Final Decision IV.F.7.

Is it really final now??

Section IV.F.7.....” The **issue of responsibility for the conduct** at issue shall not be subject to further review or appeal within the District (except as provided by District policy or collective bargaining agreement or applicable law). **Appeals of disciplinary sanctions** may be made pursuant to the District’s ordinary review process for discipline, or to the extent applicable any statutory or other processes provided under collective bargaining agreements or individual contracts.”

Duty to Effectuate Title IX Sexual Harassment Final Decision IV.F.7.b.

7. District Response to Sexual Harassment.

b. Responsibility for Response. The Title IX Coordinator is responsible for effective implementation of remedies.

Duty to Effectuate Title IX Sexual Harassment Final Decision IV.F.7.c

7. District Response to Sexual Harassment.

c. Other Actions Pursuant to Applicable Code of Conduct, Policies, Agreements, Contracts. The District may also proceed against the Respondent or Complainant pursuant to the District's applicable code of conduct or other Board policies, collective bargaining agreement, individual contract or administrative rules/regulations/procedures.