

PVPA Grievance Process for Title IX Complaints

Title IX Coordinator:

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General Information:

- Practices within these grievance procedures will be applied equally to both complainants and respondents.
- The respondent is presumed innocent and can only be found responsible for the alleged conduct at the conclusion of this grievance process.
- All parties are entitled to an advisor of their choice to assist them in this process. The advisor may, but does not have to be, an attorney.
- Schools may, in their discretion, consolidate formal complaints where the allegations arise out of the same facts.

Important Terms

Complainant – An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent – An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Title IX Coordinator – The person who oversees the grievance process and coordinates communication between the school and the parties.

Investigator – The person conducting the investigation into the allegations of sex discrimination and/or harassment. This person is not the Title IX Coordinator in order that the Title IX Coordinator remains a neutral participant.

Decision Maker – The person who reviews all the information/evidence gathered by the investigator and decides whether or not the sex discrimination and/or harassment occurred. This person is not the Title IX Coordinator or the Investigator.

Appeals Decision Maker – The person who makes the final determination in the event an appeal is filed. This person is not the Title IX Coordinator, the Investigator, or the original Decision Maker.

Supportive Measures

Supportive measures are individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

When the school becomes aware of alleged sexual harassment, the Title IX Coordinator must inform the victim to their right of supportive measures even if no formal complaint is filed. The school must consider the alleged victim's wishes with respect to supportive measures. Supportive measures for those involved in the sexual harassment complaint process may include but are not limited to: counseling, extending deadlines, modifications of work and/or class schedules, school escort services, increased school security and/or monitoring, and mutual restrictions on contact between the individuals involved through a safety plan.

Supportive measures will be kept confidential to the extent the confidentiality will not interfere with the supportive measure offered.

Dismissals of Complaints:

- **Mandatory Dismissals of Complaints**

The School must dismiss a complaint of harassment on the basis of sex when:

1. The conduct in the complaint does not meet the definition of sexual harassment;
2. The alleged sexual harassment did not occur within the school's education program or a school activity;
3. The alleged sexual harassment did not occur in the United States at all.

Complaints falling into these categories can still be processed under the school's code of conduct.

- **Discretionary Dismissals of Complaints:**

The School may dismiss a complaint of harassment on the basis of sex when:

1. The Complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw some or all of the allegations within the formal complaint;
2. If the respondent no longer is enrolled in the school, or employed by the school; or
3. If specific circumstances prevent the school from gathering evidence sufficient to reach a determination about the allegations.

Whenever a dismissal occurs, the Title IX investigator will send written notice of the dismissal to the parties outlining the reason for the dismissal. Both parties have the right to appeal the dismissal decision as outlined in the appeals process below.

The Process:

Step One: Filing a Complaint

Any person may file a report of sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), at any time either in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. There is no time limit or statute of limitations on a complainant's decision to file a formal complaint. However, if a person files a false complaint in bad faith, knowingly and intentionally, they will be subject to discipline.

Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party during a grievance process, and must comply with requirements for all Title IX personnel to be free from conflicts and bias.

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.

Step Two: Initial Notice

Upon the filing of a formal complaint, both parties will be provided with written notice of the complaint. The notice will include key details of the alleged sexual harassment incident. Such details will include but not be limited to: who was involved, when and where the alleged incident occurred, and the alleged misconduct that constitutes sexual harassment. Any known possible violation of the code of conduct along with potential consequences must be included in the initial notice. A copy of this grievance process must also be included with the notice.

This written notice will be sent to the parties within three business days of the filing of a formal complaint.

*Interviews with a respondent may not occur until this notice has been provided and the respondent is provided reasonable time to prepare before an initial interview.

Step Four: Gathering Evidence

During the collection of evidence, the school is not allowed to access a party's personal records if they are maintained by a physician, attorney, psychologist, psychiatrist or other professional with whom the student shares privileged information unless the student provides written consent.

Equal opportunity will be provided for all parties to provide witnesses and evidence, including written expert testimony and inculpatory and exculpatory evidence. Parties cannot be prevented from discussing the allegations or collecting relevant evidence. The school will use the preponderance of the evidence standard for all complaints of harassment on the basis of sex, regardless of whether the complaint is against students or school employees.

- **Interviews**

Students will be provided with written notice prior to any interviews or meeting involving the Title IX complaint. The notice will include the date, time, location, participants, and purpose of the interview/meeting and will allow the respondent/complainant enough time to properly prepare for the meeting.

- **Inspection of Evidence**

The school must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence.

- **Opportunity to Respond**

The parties will have the opportunity to provide a response to the evidence if they desire.

- **Opportunity to Ask Questions**

The parties will have the opportunity to provide relevant written questions to each other before the decision maker reaches a determination. In the event the decision maker decides not to allow a particular question, the decision maker must explain to the parties why the question is not relevant to the determination. * Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

The investigator will attempt to conclude the evidentiary process within three weeks. This may be extended if the investigator finds that more time is necessary to appropriately investigate the matter. The Title IX Coordinator will have to approve the investigator's request to extend the timeline in order to assure all investigations are processed in a timely manner as to prevent evidence from becoming stale or unobtainable.

Step Five: The Investigative Report

After the evidence is collected, and the parties have been provided with ten days to respond to the evidence in writing, the investigator will prepare an investigative report regarding the allegations in the complaint. If a party submits a response to the evidence, the school must consider that response before finalizing the investigative report. The report will fairly summarize the evidence the school gathered about the alleged incident. The report, once finalized, must be submitted to the parties in electronic form, or a hard copy. The parties then have another 10 days to provide additional information before a determination is made.

Step Six: The Determination

The decision maker will objectively review the relevant evidence and reach conclusions about whether the respondent engaged in the alleged harassment. The decision maker must use independent judgment, so the decision maker is not the same person who conducted the investigation and cannot be the school's Title IX Coordinator.

- The determination must be written. It must include at a minimum, the following information:
 - 1) The school's policy/policies that were alleged to be violated;
 - 2) A description of the procedural steps that were taken (including notices sent, interviews conducted, evidence gathered);
 - 3) A section detailing the findings of fact;
 - 4) A conclusion section that applies the facts to the relevant policy/policies;
 - 5) A statement and rationale regarding the ultimate determination of responsibility;
 - 6) Any disciplinary sanctions the school will impose and any remedies to the complainant if applicable;
 - 7) A statement of the rationale for the remedies to the complaint and how those remedies will restore or preserve equal access;
 - 8) A statement of the school's procedures and a statement regarding the parties' rights to appeal the initial determination of responsibility and the permissible basis for an appeal.

The determination will be sent to the parties simultaneously along with the appeals information.

Step Seven: The Appeals Process

Parties may appeal after a dismissal occurs, or a determination is issued. Parties will have five (5) days to appeal the dismissal or determination.

Grounds for Appeals

- 1) If a party believes that procedural irregularity altered the outcome of the determination or dismissal.
- 2) New evidence has been discovered that was not reasonably available at the time of the determination or dismissal. *An appeal for this reason may occur after the five day appeal requirement but not after one year.
- 3) A conflict of interest on the part of a Title IX Coordinator, investigator who compiled evidence, or the decision maker existed, and that conflict of interest affected the determination or dismissal.

To file an appeal, a party must notify the Title IX Coordinator in writing that they wish to appeal the determination. All parties will have an equal opportunity to submit a written statement supporting or challenging the determination. The Title IX Coordinator will inform the parties that they have 7 days to submit their written statements.

The person who will decide the appeal cannot be the decision maker, the investigator, or the Title IX Coordinator. Upon review of the parties' written statements (if they so choose to provide them), and review the determination, the appeals decision maker will issue a written decision and send it to the parties simultaneously. The determination becomes final after the appeals process.

Remedies:

If the school makes a determination that sex discrimination/harassment did occur, the school will help effectively implement remedies for a complainant.

Retaliation is prohibited.

Any person who experiences retaliation for exercising their rights under Title IX can file a retaliation complaint with the Title IX Coordinator. The school will keep the names/identity of parties and witnesses confidential unless such disclosure is required under another law, or is necessary to conduct a thorough grievance procedure.

If the Grievance Process may Result in Discipline:

If upon the conclusion of this grievance process, discipline appears warranted, the school will follow the usual disciplinary process for students outlined within the student handbook. The school will also follow the required disciplinary process for school employees.