

Sexual Harassment of Students Prohibited

The procedure is intended to set forth the requirements of Policy 3205, including the process for a prompt, thorough, and equitable investigation of allegations of sexual harassment and the need to take appropriate steps to resolve such situations. If sexual harassment is found to have created a hostile environment, staff must take immediate action to eliminate the harassment, prevent its reoccurrence, and address its effects.

This procedure applies to sexual harassment (including sexual violence) targeted at students carried out by other students, employees, or third parties involved in District activities. Because students can experience the continuing effects of off-campus harassment in the educational setting, the District will consider the effects of off-campus conduct when evaluating whether there is a hostile environment on campus. The District has jurisdiction over these complaints pursuant to Title IX of the Education Amendments of 1972, Chapter 28A.640 RCW, and Chapter 392-190 WAC.

I. TITLE IX COORDINATOR, INVESTIGATOR, AND DECISION-MAKER

The District will designate and authorize one employee to act as “Title IX Coordinator” to coordinate the District’s state and federal sex discrimination and sexual harassment regulation compliance efforts. The decision-maker who reaches the final determination of responsibility for alleged Title IX sexual harassment will be the Superintendent or designee. The decision-maker cannot be the same person who serves as the Title IX Coordinator or the investigator of the Title IX complaint.

The Title IX coordinator’s name, title, office address, telephone number, and email address must be available on the District website; in handbooks/catalogs that are made available to staff, students, and parents; and in the District’s nondiscrimination statement.

Any individual designated as Title IX Coordinator, an investigator, or decision-maker, and any person who facilitates an informal resolution process, must not have a conflict of interest or bias for or against the individual(s) who made the complaint (“complainant(s)”) or the individual(s) reported to be the perpetrator of the conduct that could constitute sexual harassment (“respondent(s)”), in general or individually. Such persons must also receive training on the following:

- The definition of sexual harassment under Title IX and state law;
- The scope of the District’s education program or activity;
- How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable;
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- Their responsibilities under Chapter 392-190 WAC; and

- How to raise awareness of and eliminate bias based on sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal.

District investigators must also receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

District decision-makers must also receive training on any technology to be used during live hearings if the District provides for a hearing. Decision-makers must also receive training on issues of relevance of questions and evidence, including the requirement that questions and evidence about a complainant's sexual predisposition or prior sexual conduct are not relevant unless (1) such questions and evidence are offered to prove that someone other than the respondent committed the alleged conduct, or (2) questions and evidence concerning specific incidents of the complainant's prior sexual behavior with respect to the respondent are offered to prove consent.

Any training materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must not rely on sex stereotypes and must promote impartial investigations and adjudications of complaints. Such training materials will be publicly available via the District's website.

II. NOTICE OF SEXUAL HARASSMENT POLICY AND PROCEDURE

Information about the District's sexual harassment policy and complaint procedure will be easily understandable and conspicuously posted throughout each school building. Such information will also be reproduced in each student, staff, volunteer, and parent handbook. This notice will be provided in a language that each parent and guardian can understand.

In addition to the posting and reproduction of this procedure and Policy 3205, the District will provide annual notice to employees that complaints pursuant to this procedure may be filed at 516 Main St., Lynden, WA 98264.

III. RESPONDING TO NOTICE OF SEXUAL HARASSMENT, INCLUDING INFORMAL COMPLAINTS

The District is on notice and required to take action when any employee knows, or in the exercise of reasonable care should know, about possible sexual harassment. This includes (1) informal (i.e., verbal) reports of sexual harassment, referred to in this procedure as "informal complaints," and (2) formal, written complaints made to the Title IX Coordinator, as described in Section VII, below.

Upon notice of possible sexual harassment, staff will always notify the Title IX Coordinator. Additionally, staff will also inform an appropriate supervisor or professional staff member when they receive complaints of sexual harassment, especially when the complaint is beyond their training to resolve or alleges serious misconduct.

In the event of an alleged sexual assault, the school principal will immediately:

(1) inform the Title IX Coordinator (and Civil Rights Compliance Coordinator, if a different individual) so that the District can appropriately respond to the incident consistent with its own grievance procedures; (2) inform law enforcement; and (3) notify the targeted student(s) and their parents/guardians of their right to file a criminal complaint and a sexual harassment complaint simultaneously.

Once the District is on notice of possible sexual harassment, the Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures (as described in Section IV, below), 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.

When an informal complaint of sexual harassment is made, the Title IX Coordinator may inquire of the complainant regarding the report of sexual harassment to determine whether a formal complaint is warranted. The Title IX Coordinator will inform the complainant that imposition of disciplinary sanctions or other actions that are not supportive measures against a respondent will not be available unless a formal complaint occurs.

A complainant may file a formal complaint at any time while receiving supportive measures. A complainant, their parent/guardian, or the Title IX Coordinator may file a formal complaint because, for example, they feel the complaint needs to be more thoroughly investigated or discipline may be warranted for the individual(s) alleged to have engaged in sexually harassing conduct.

IV. SUPPORTIVE MEASURES

Supportive measures must be offered to the complainant, before or after the filing of a formal complaint, or where no formal complaint has been filed. Supportive measures may also be provided to the respondent. 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. Supportive measures should be designed to restore or preserve access to the District's education program or activity without unreasonably burdening the other party.

Supportive measures may include:

- An opportunity for the complainant to explain to the alleged harasser that his or her conduct is unwelcome, offensive, or inappropriate, either in writing or face-to-face;
- A statement from a staff member to the alleged harasser that the alleged conduct is not appropriate and could lead to discipline if proven or repeated;
- A general public statement from an administrator in a building reviewing the District sexual harassment policy without identifying the complainant;
- Developing a safety plan;

- Modifications of work or class schedules;
- Mutual restrictions on contact between the parties;
- Increased security and monitoring of certain areas of the campus or school building; or
- Providing staff and/or student training.

V. CONFIDENTIALITY OF COMPLAINTS

The District will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures.

If a complainant requests that his or her name not be revealed to the alleged perpetrator or asks that the District not investigate or seek action against the alleged perpetrator, the request will be forwarded to the Title IX Coordinator. The Title IX Coordinator should inform the complainant that honoring the request may limit the District's ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator.

If the complainant still requests that his or her name not be disclosed to the alleged perpetrator or that the District not investigate or seek action against the alleged perpetrator, the District will need to determine whether it can honor such a request while still providing a safe and nondiscriminatory environment for all students, staff, and other third parties engaging in District activities, including the person who reported the sexual harassment. Although a complainant's request to have his or her name withheld may limit the District's ability to respond fully to an individual allegation of sexual harassment, the District will use other appropriate means available to address the sexual harassment.

VI. RETALIATION PROHIBITED

Title IX and state law prohibit retaliation against any individual who files a complaint under these laws or participates in a complaint investigation. When an informal or formal complaint of sexual harassment is made, the District will take steps to stop further harassment and prevent any retaliation against the person who made the complaint, was the subject of the harassment, or provided information as a witness. The District will investigate all allegations of retaliation and take actions against those found to have retaliated.

VII. FORMAL COMPLAINTS

A. Filing of Formal Complaints

Anyone may file a formal complaint of sexual harassment. All formal complaints will be in writing and will set forth the specific acts, conditions, or circumstances alleged to have occurred and to constitute sexual harassment. The Title IX Coordinator may draft the complaint based on the report of the complainant for the complainant to review and approve. The Title IX Coordinator may also conclude that the District needs to conduct an investigation based on information in his or her possession, regardless of the complainant's interest in filing a formal complaint.

The time period for filing a formal complaint to which Title IX does not apply is one year from the date of the occurrence that is the subject matter of the complaint. However, this complaint filing deadline may not be imposed if the complainant was prevented from filing due to: (1) specific misrepresentations by the District that it had resolved the problem forming the basis of the complaint; or (2) withholding of information that the District was required to provide under Chapter 392-190 WAC or guidelines supplementing that chapter issued by the Office of Superintendent of Public Instruction (“OSPI”).

Complaints may be submitted by mail, fax, email, or hand-delivery to the District’s Title IX Coordinator: Tim Metz, Director of Student Services, 516 Main St., Lynden, WA 98264, (360) 354-4443, metzt@lynden.wednet.edu. Any District employee who receives a complaint that meets these criteria will promptly notify the Title IX Coordinator.

B. Title IX Coordinator Review of Formal Complaints

The Title IX Coordinator will assess whether a formal complaint of sexual harassment meets the criteria for a Title IX complaint. If so, the District will implement investigation and response procedures under state law and follow additional procedures as required by Title IX regulations.

Under Title IX, the term “sexual harassment” means:

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

The District will implement additional Title IX procedures in response to a sexual harassment complaint when the alleged conduct constitutes sexual harassment as defined by Title IX regulations and:

- The written complaint is filed by the complainant of the alleged sexual harassment, by the complainant’s legal guardian, or by the Title IX Coordinator;
- The complaint requests that the District investigate the allegation(s) of sexual harassment, as defined under Title IX regulations;
- The complaint is against a named respondent who, at the time of the alleged harassment, was under the control of the District (such as a student, employee, or volunteer);
- The alleged sexually harassing conduct occurred in the United States; and
- The complainant is participating in or attempting to participate in the District’s educational program or activity at the time.

If the formal complaint is determined not to meet the criteria for a Title IX complaint, the District will conduct the investigation without implementing additional Title IX procedures and will investigate in accordance with Section VII.C, below.

If the formal complaint is determined to meet the criteria for a Title IX complaint, the District will conduct the investigation by implementing additional Title IX procedures and investigate in accordance with Section VII.D, below.

C. Formal Complaint Process

1. Acknowledging a Formal Complaint

Upon receipt of a formal complaint, the Title IX Coordinator will provide the complainant with a copy of this procedure in a language that the complainant can understand.

In response to notice of sexual harassment, the District will take prompt and appropriate action to investigate and take prompt and effective steps reasonably calculated to end harassment, eliminate the hostile environment, prevent its recurrence, and as appropriate, remedy its effects. To that end, the Title IX Coordinator will receive and investigate all formal, written complaints of sexual harassment or information in his or her possession that the Coordinator believes require further investigation. The Coordinator will delegate his or her authority to participate in this process if such action is necessary to avoid any potential conflicts of interest.

2. Investigating a Formal Complaint

Investigations will be carried out in a manner that is prompt, thorough, reliable, and impartial. During the investigation process, the complainant and respondent(s), if the complainant has identified an accused harasser(s), will have an equal opportunity to present witnesses and relevant evidence. Complainants, respondents, and witnesses may have a trusted adult with them during any District-initiated investigatory activities. The District and complainant may also agree to resolve the complaint in lieu of an investigation.

When the investigation is completed, the investigator will compile a full written report of the complaint and the results of the investigation.

3. Mediation

At any time during the complaint procedure set forth in WAC 392-190-065 through -075, a District may, at its own expense, offer mediation. The complainant and the District may agree to extend the complaint process deadlines in order to pursue mediation.

The purpose of mediation is to provide both the complainant and the District an opportunity to resolve disputes and reach a mutually acceptable agreement through the use of an impartial mediator. Mediation must be voluntary and requires the mutual agreement of both parties. It may be terminated by either party at any time during the mediation process. It may not be used to deny or delay a complainant's right to utilize the complaint procedures.

Mediation must be conducted by a qualified and impartial mediator who may not: (a) be an employee of any District, public charter school, or other public or private agency that is

providing education related services to a student who is the subject of the complaint being mediated; or (b) have a personal or professional conflict of interest. A mediator is not considered an employee of the District or charter school or other public or private agency solely because he or she serves as a mediator.

If the parties reach agreement through mediation, they may execute a legally binding agreement that sets forth the resolution and states that all discussions that occurred during the course of mediation will remain confidential and may not be used as evidence in any subsequent complaint, due process hearing, or civil proceeding. The agreement must be signed by the complainant and a District representative who has authority to bind the District.

4. Response of the Superintendent' Designee to a Formal Complaint

The Superintendent will select a designee to respond to the formal complaint. The designee will not be the Title IX Coordinator or the investigator. The designee will respond in writing to the complainant and the respondent within thirty (30) calendar days of receipt of the complaint, unless otherwise agreed to by the complainant or if exceptional circumstances related to the complaint require an extension of the time limit. In the event an extension is needed, the District will notify the parties in writing of the reason for the extension and the anticipated response date. At the time the District responds to the complainant, the District must send a copy of the response to OSPI.

The response of the designee will include: (1) a summary of the results of the investigation; (2) a statement as to whether a preponderance of the evidence establishes that the complainant was sexually harassed; (3) if sexual harassment is found to have occurred, the corrective measures the District deems necessary, including assurance that the District will take steps to prevent recurrence and remedy its effects on the complainant and others, if appropriate; (4) notice of the right to appeal to the Superintendent or designee and the necessary filing information; (5) any corrective measures the District will take, remedies for the complainant (e.g., sources of counseling, advocacy, and academic support), and notice of potential sanctions for the perpetrator(s) (e.g., discipline); and (6) a statement concerning whether the District has failed to comply with Chapter 392-190 WAC or guidelines supplementing that chapter issued by OSPI.

This response of the designee will be provided in a language that the complainant can understand and may require language assistance for complainants with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964. If the complaint alleges discriminatory harassment by a named respondent or respondent(s), the Title IX Coordinator will provide the respondent(s) with notice of the outcome of the investigation and notice of their right to appeal any discipline or corrective action imposed by the District.

Any corrective measures deemed necessary will be instituted as quickly as possible, but in no event more than thirty (30) days after the mailing of the written response, unless the accused is appealing the imposition of discipline and the District is barred by due process considerations or a lawful order from imposing the discipline until the appeal process is concluded. Staff may also pursue complaints through the appropriate collective bargaining agreement process or anti-discrimination policy.

The District will inform the complainant and their parent/guardian how to report any subsequent problems. Additionally, the District will conduct follow-up inquiries to see if there have been any new incidents and to promptly respond and appropriately address continuing or new problems. Follow-up inquiries will follow a timeline agreed to by the District and complainant.

The complainant and the District may agree to resolve the complaint in lieu of an investigation. If the complaint is resolved to the satisfaction of the parties involved, no further action is necessary.

The decision of the Superintendent's designee may be appealed as provided in Section VIII.

D. Formal Complaint Process with Additional Title IX Requirements

The following sections outline the process the District will take to respond to complaints of sexual harassment when state law and Title IX both apply.

1. Acknowledging a Title IX Formal Complaint

The Title IX Coordinator will receive and investigate all formal, written complaints of sexual harassment or information in his or her possession that the Coordinator believes require further investigation. The Coordinator will delegate his or her authority to participate in this process if such action is necessary to avoid any potential conflicts of interest. Upon receipt of a complaint, the Coordinator will offer supportive measures to the complainant and may offer such measures to the respondent(s).

The District will acknowledge receipt of the formal complaint by providing the following written notice to the respondent(s) and complainant:

- A copy of the District's discrimination complaint procedure in a language the parties can understand.
- Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Such sufficient detail includes the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.
- Notice that the parties may have an advisor of their choice, who may be an attorney or non-attorney and who may inspect and review evidence of the alleged sexual harassment.
- Notice that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility for alleged sexual harassment is made at the conclusion of the grievance process.
- Notice of any provision in student conduct policies and procedures that prohibits false statements or submitting false information.

If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the initial notice described above, the District must provide notice of the additional allegations to the parties whose identities are known.

2. Investigating a Title IX Formal Complaint

The district must investigate allegations contained in a formal complaint. If the conduct alleged would not constitute sexual harassment under Title IX regulations even if proven, did not occur in the District's education program or activity, or did not occur against a person in the United States, then the District must dismiss the formal complaint under Title IX. Such dismissal does not preclude action under another provision of District policy or procedure or under sexual harassment investigation procedures as required by state law (see Section VII.C of this procedure). The District may dismiss a Title IX formal complaint when: (1) a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; (2) the respondent is no longer enrolled in or employed by the District; or (3) specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. Upon dismissal for any of the above reasons, the District must promptly send written notice of dismissal and the reason(s) therefore simultaneously to the parties.

The District adopts a "preponderance of the evidence" as the standard of proof it will use in reaching decisions regarding complaints.

The District may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

The District's investigation of a Title IX complaint must:

- Include a prompt and thorough investigation into the allegations in the complaint.
- Ensure that the District bears the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility for the alleged sexual harassment. The District may not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting or assisting in their professional capacity and made and maintained in connection with the provision of treatment to the party unless the District obtains the party's voluntary, written consent to do so.
- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related

meeting or proceeding by the advisor of their choice, who may be an attorney or non-attorney. The District will apply any restrictions regarding the extent to which an advisor may participate equally to both parties.

- Provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, interviews, or other meetings, with sufficient time for the parties to prepare to participate.
- Include an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.
- Ensure that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
- Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege (e.g., the attorney-client privilege), unless the person holding such privilege has waived the privilege.

Prior to the completion of an investigative report, the investigator must provide an equal opportunity for the parties to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation. This includes evidence that the District does not intend to rely on in reaching a determination of responsibility for the alleged sexual harassment, regardless of the source of the evidence. The parties will have at least ten (10) days to submit a written response for the investigator to consider prior to completion of the investigative report.

At least ten (10) days prior to a determination regarding responsibility, the investigator must create an investigative report that fairly summarizes relevant evidence and send the investigative report in an electronic or hard copy format to each party and each party's advisor for their review and written response.

After transmitting the investigative report to the parties, but before reaching a final determination regarding responsibility, the decision-maker must give each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant unless they are offered to prove that someone other than the respondent committed the conduct alleged by the complainant or unless they concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant.

The District's Title IX investigative and grievance process is not required to include investigative hearings.

Temporary delay of the investigation process and/or limited extension of timeframes described in this Section VII.D are allowed for good cause with written notice to the complainant and the respondent of the delay or extension and the reason for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

3. Discipline and Emergency Removals for Alleged Sexual Harassment under Title IX

A respondent who is accused of sexual harassment under Title IX is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The District may not impose any disciplinary sanctions, or other actions that are not supportive measures, against the respondent until the District has determined the respondent was responsible for the sexual harassment at the conclusion of the grievance process.

These additional Title IX sexual harassment procedures do not preclude a District from removing a student from school on an emergency basis consistent with Policy 3241 and Procedure 3241P ("Discipline for Student Misconduct") and the associated OSPI regulations for emergency expulsion.

4. Title IX Informal Resolution Process

At any time prior to a determination in a formal Title IX complaint, the District may permit a complainant to waive the formal complaint grievance process in favor of an informal resolution process not involving a full investigation and adjudication, provided that the District obtains the parties' voluntary, written consent. The District must not offer informal resolution of sexual harassment allegations against a respondent who is an employee of the District.

When facilitating an informal resolution process, the District will provide the parties with written notice disclosing: (1) the allegations; (2) the requirements for the informal resolution process; (3) the circumstances in which the parties would be precluded from continuing with a formal resolution process for the same allegations; (4) a party's right to withdraw from the informal resolution process and resume the formal Title IX grievance process at any time prior to agreeing to a resolution; and (5) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The District may not require the waiver of the right to an investigation and adjudication of formal complaints of sexual harassment under Title IX as a condition of enrollment, employment, or enjoyment of any other right, nor may the District require the parties to participate in an informal resolution process. The District will not offer an informal resolution process unless a formal complaint is filed.

The Title IX information resolution process will conclude within forty-five (45) calendar days of the complainant's decision to waive the formal complaint process, unless good cause exists for extension of the timeframe. If the informal resolution process has not concluded by that time and the complainant has not withdrawn the complaint, the Title IX Coordinator will proceed with the investigation of the formal complaint in accordance with this procedure.

5. Response of the Superintendent's Designee to a Title IX Formal Complaint

The Superintendent will select a designee to respond to the formal Title IX complaint as the decision-maker. The designee will not be the Title IX Coordinator or the investigator. At the conclusion of the investigation, the decision-maker must issue a written determination of responsibility regarding the alleged sexual harassment within thirty (30) calendar days of receipt of the complaint, unless otherwise agreed to by the complainant or if exceptional circumstances related to the complaint require an extension of the time limit. In the event an extension is needed, the District will notify the parties in writing of the reason for the extension and the anticipated response date.

The written determination of the decision-maker must be issued to the parties simultaneously and must include the following:

- Identification of the allegations potentially constituting sexual harassment under Title IX regulations;
- A description of the procedural steps taken from the time of the District's receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings supporting the determination;
- A summary of the results of the investigation;
- Conclusions regarding the application of the District's code of conduct policies to the facts;
- A statement as to whether a preponderance of the evidence establishes that the complainant was sexually harassed;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary or other sanctions imposed on the respondent, and whether remedies designed to restore or preserve equal access to the education program or activity will be provided to the complainant;
- If sexual harassment is found to have occurred, the corrective measures the District deems necessary, including assurance that the District will take steps to prevent recurrence and remedy its effects on the complainant and others, if appropriate;
- A statement concerning whether the District has failed to comply with Chapter 392-190 WAC or guidelines supplementing that chapter issued by OSPI; and
- Notice of the parties' right to appeal to the Superintendent or designee and the necessary filing information.

The response of the decision-maker will be provided in a language the complainant and respondent can understand and may require language assistance for complainants with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964.

At the time the District responds to the parties, the District must send a copy of the response to OSPI.

Disciplinary sanctions and remedies for students that may be implemented following any determination of responsibility include those corrective actions described in Policy 3241 and Procedure 3241P including, without limitation, short- and long-term suspension, expulsion, and emergency expulsion. Disciplinary sanctions and remedies for employees that may be implemented following any determination of responsibility include, without limitation, written reprimands, suspensions without pay, demotion, transfer, nonrenewal, and termination consistent with any relevant collective bargaining agreement and District policy and procedure.

Any corrective measures deemed necessary will be instituted as quickly as possible, but in no event more than thirty (30) days after the mailing of a written response, unless the accused is appealing the imposition of discipline and the District is barred by due process considerations or a lawful order from imposing the discipline until the appeal process is concluded. Staff may also pursue complaints through the appropriate collective bargaining agreement process or anti-discrimination policy.

The decision of the Superintendent's designee may be appealed as provided in Section VIII.

VIII. APPEALS

A. Appeal to Superintendent or Designee

1. Notice of Appeal and Hearing

If the complainant or respondent(s) disagree with the written decision of the Superintendent's designee, the disagreeing party may appeal the decision by filing a written notice of appeal with the Superintendent within ten (10) calendar days following the date upon which the complainant received the response.

A complainant or respondent may appeal due to one or more of the following reasons, which are not exclusive: (1) the sufficiency of the factual findings made during the investigation; (2) the validity of the conclusions of the Superintendent's designee regarding whether there have been violations of law or District policy and procedure; (3) the appropriateness of the corrective actions or other remedies determined by the designee; (4) procedural irregularity that affected the outcome of the matter; (5) 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 (6) the Title IX Coordinator, investigator, or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The decision-maker for the appeal will be either the Superintendent or his or her designee. The decision-maker for the appeal will not be the same decision-maker who reached the

determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator. The District will ensure that the decision-maker for the appeal has received the training required for decision-makers as required by this procedure.

If the complaint involves a named respondent, the District will implement appeal procedures equally for both parties and provide written notice to the other party when an appeal is filed.

Both parties will be allowed a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome of the initial determination. Such written statement should clearly identify the reason(s) for the appeal, explain the party's arguments, and set forth the party's desired remedy (if any). The written statement must be submitted to the decision-maker within twenty (20) calendar days following the filing of the notice of appeal, unless good cause exists for extension of the timeframe.

2. Appeal Decision

The Superintendent or designee will review the written statements of the parties, the investigative report and associated evidence, the decision regarding responsibilities, and other material deemed relevant and material by the Superintendent or designee. The Superintendent or designee will render a written appeal decision within thirty (30) calendar days following the filing of the notice of appeal, unless good cause exists for extension of the timeframe, and will simultaneously provide the parties with a copy of the decision.

The written appeal decision will describe the result of the appeal and the rationale for the result. The decision will include notice of the right to appeal to OSPI and will identify where and to whom the appeal must be filed. The District will send a copy of the appeal decision to OSPI.

The decision will be provided in a language that the complainant and respondent can understand, which may require language assistance for complainants with limited English proficiency in accordance with Title VI of the Civil Rights Act.

B. Complaint to OSPI

1. Filing of Complaint

If a complainant or respondent disagrees with the appeal decision of the Superintendent or designee, or if the District fails to comply with the procedures in WAC 392-190-065 through -070, the party may file a complaint with OSPI.

A complaint must be received by OSPI on or before the twentieth (20) calendar day following the date upon which the complainant received written notice of the appeal decision of the Superintendent or designee, unless OSPI grants an extension for good cause. Complaints may be submitted by mail, fax, electronic mail, or hand delivery.

A complaint must be in writing and include: (1) a description of the specific acts, conditions, or circumstances alleged to violate applicable anti-sexual harassment laws; (2) the name and contact information, including address, of the complainant; (3) the name and address of the District subject to the complaint; (4) a copy of the District's complaint and appeal decision, if

any; and (5) a proposed resolution of the complaint or relief requested. If the allegations regard a specific student, the complaint must also include the name and address of the student, or in the case of a homeless child or youth, contact information, and the name of the school district that the student attends.

2. Investigation, Determination, and Corrective Action

Upon receipt of a complaint, OSPI may initiate an investigation, which may include conducting an independent onsite review. OSPI may also investigate additional issues related to the complaint that were not included in the initial complaint or appeal to the Superintendent or designee.

Following an investigation, OSPI will make an independent determination as to whether the District has failed to comply with Chapter 392-190 WAC or the guidelines supplementing that chapter issued by OSPI and will issue a written decision to the complainant and the District that addresses each allegation in the complaint and any other noncompliance issues it has identified. The written decision will include corrective actions deemed necessary to correct noncompliance and documentation the District must provide to demonstrate that corrective action has been completed.

All corrective actions must be completed within the timelines established by OSPI in the written decision unless OSPI grants an extension. If timely compliance is not achieved, OSPI may take action including, but not limited to, referring the District to appropriate state or federal agencies empowered to order compliance.

A complaint may be resolved at any time when, before the completion of the investigation, the District voluntarily agrees to resolve the complaint. OSPI may provide technical assistance and dispute resolution methods to resolve a complaint.

3. Administrative Hearing

A complainant, respondent, or the District desiring to appeal the written decision of OSPI may file a written notice of appeal with OSPI within thirty (30) calendar days following the date of receipt of OSPI's written decision. OSPI will conduct a formal administrative hearing in conformance with the Washington Administrative Procedures Act, Chapter 34.05 RCW.

IX. Other Complaint Options

The following complaint options exist in addition to the procedures described above.

Office for Civil Rights (OCR), U.S. Department of Education

OCR enforces several federal civil rights laws that prohibit discrimination in public schools on the basis of race, color, national origin, sex, disability, and age. File complaints with OCR within 180 calendar days of the date of the alleged discrimination.

206-607-1600 | TDD: 1-800-877-8339 | OCR.Seattle@ed.gov | www.ed.gov/ocr

Washington State Human Rights Commission (WSHRC)

WSHRC enforces the Washington Law Against Discrimination (Chapter 49.60 RCW), which prohibits discrimination in employment and in places of public accommodation, including schools. File complaints with WSHRC within six months of the date of the alleged discrimination.

1-800-233-3247 | TTY: 1-800-300-7525 | www.hum.wa.gov

X. Investigation Recordkeeping

The District will maintain for a period of seven years records of:

- Each sexual harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript required by federal law, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the District's education program or activity.
- Any appeal and the result therefrom.
- Any informal resolution and the result therefrom.
- Records of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment under Title IX.
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

Investigative records will be stored in the investigative files of the District's Human Resources department.

XI. Training and Orientation

A fixed component of all District orientation sessions for staff, students, and regular volunteers will introduce the elements of this procedure and the corresponding policy. Staff will be provided information on recognizing and preventing sexual harassment. Staff will be fully informed of their responsibilities when on notice of sexual harassment, the formal complaint procedures, and their roles and responsibilities under the policy and procedure.

Certificated staff will be reminded of their legal responsibility to report suspected child abuse and how that responsibility may be implicated by some allegations of sexual harassment. Regular volunteers will receive the portions of this component of orientation relevant to their rights and responsibilities.

Students will be provided with age-appropriate information on the recognition and prevention of sexual harassment and their rights and responsibilities under this and other District policies and rules at student orientation sessions and on other appropriate occasions, which may include parents/guardians.

As part of the information on the recognition and prevention of sexual harassment staff, volunteers, students, and parents will be informed that sexual harassment may include, but is not limited to:

- Demands for sexual favors in exchange for preferential treatment or something of value;
- Stating or implying that a person will lose something if he or she does not submit to a sexual request;
- Penalizing a person for refusing to submit to a sexual advance, or providing a benefit to someone who does;
- Making unwelcome, offensive, or inappropriate sexually suggestive remarks, comments, gestures, or jokes, or remarks of a sexual nature about a person's appearance, gender, or conduct;
- Using derogatory sexual terms for a person;
- Standing too close, inappropriately touching, cornering, or stalking a person; or
- Displaying offensive or inappropriate sexual illustrations on school property.

XII. Policy and Procedure Review

The Superintendent or designee annually will review with the Title IX Coordinator, school administrators, and department directors the use and efficacy of this program and procedure. Representatives of certificated and classified staff, volunteers, students, and parents may be included in the review. Based on the review of the committee, the Superintendent will prepare a report to the Board of Directors including, if necessary, any recommended policy changes. The Superintendent will consider adopting changes to this corresponding procedure if recommended by the committee.

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