

Sex Discrimination and Sex-Based Harassment of Students Prohibited Grievance Procedure

The district is committed to providing an educational environment that is free from sex discrimination, sex-based harassment, and retaliation for engaging in any protected activity as required by Federal and State laws for all students.

The district has jurisdiction over these complaints pursuant to the Federal law Title IX of the Education Amendments of 1972 (Title IX) and Washington State laws, including Chapter 28A.640 RCW and Chapter 392-190 WAC.

This procedure sets forth the district's process for receiving, investigating, and resolving reports or complaints of sex discrimination. It is designed to provide for a prompt, thorough, and equitable investigation of complaints and to take appropriate steps to resolve such situations. If sex discrimination is found to have occurred, the district must also take immediate action to eliminate the discrimination, prevent its recurrence, and address its effects.

Under Washington State law, anyone may file a complaint with the district alleging any action that Federal, State, or local sex-based nondiscrimination laws and regulations would prohibit. However, the grievance procedure below was developed to meet the district's obligations under Title IX and is aligned with Washington State laws and regulations that define sex discrimination, including those that prohibit sex-based harassment. As discussed in Section III.B, the district will assess complaints under this procedure and may refer them to other district policies and procedures.

For questions about this procedure, contact the District's Title IX Coordinator, who can be reached at:

Tim Metz, Title IX Coordinator, MetzT@lynden.wednet.edu, 360-354-4443

I. General Definitions

“Complainant,” as defined by Federal law, Title IX, means a student, employee, or other person who was participating or attempting to participate in a District education program or activity who is alleged to have been subjected to sex discrimination.

In some instances, the person who files a complaint may not be the student, employee, or other person who was alleged to have been subjected to sex discrimination. In those cases, the person who filed the complaint is referred to as the “Complaint Requestor,” and the student, employee, or person subjected to the alleged sex discrimination is referred to as “the Complainant” in documents related to the complaint.

“Complaint” means an oral or written request to the district that can be objectively understood as a request the district investigate and determine whether alleged sex discrimination occurred.

“Party” or “Parties” means a Complainant(s) or Respondent(s).

“Prohibited Conduct” means legally prohibited sex discrimination and harassment. Specific prohibited conduct is defined in Section VI below.

“Remedies” means appropriate measures provided after the district determines that sex discrimination occurred to restore or preserve a Complainant or any other person’s equal access to the recipient’s education program or activity.

“Respondent” means a person who is alleged to have violated the district’s prohibition of sex discrimination and can be a student, employee, or other third party. (If the complaint is not against an individual or group of individuals but is based solely on a policy or practice of the district, it will be considered a complaint of sex discrimination against the district. Parts of this procedure that apply to a “Respondent” will not apply, but all other parts of the procedure will be applied.)

“Student with a disability” means a student who is an individual with a disability as defined in Section 504 of the Rehabilitation Act of 1973 (Section 504) or a child with a disability as defined in the Individuals with Disabilities Education Act (IDEA).

“Written notice” means written or electronic notice in a language the party can understand, which may require language assistance for parties with limited English proficiency in accordance with Title VI of the Civil Rights Act. The term parties include the parent(s)/guardian(s) of any minor student.

II. Responding to Notice or Report of Sex Discrimination

Upon receipt of notice, reports, or knowledge about alleged sex discrimination, including sex-based harassment, the district will take steps, as necessary, to address information that is reported to it by others to the extent that it is feasible to do so while maintaining the confidentiality of the affected student or employee.

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 sex discrimination. This includes verbal or written reports made to any employee, including anonymous complaints.

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

The district will make every effort to protect Parties' privacy. However, in the event of an alleged sexual assault of a minor (under age 18) student or employee, the school principal will

immediately inform law enforcement consistent with mandatory reporting requirements at RCW 26.44.

In the event of an alleged sexual assault, the school principal will also immediately notify the student, parent or guardian, or employee of their right to file a criminal complaint with law enforcement and a sex-based harassment complaint with the district. With the consent of the student or employee or when there is a legal requirement to do so, the Principal may also help them contact law enforcement.

III. Supportive Measures, Notice of Applicable Policy/Procedure and Other Considerations

Once the Title IX Coordinator has been notified of possible sex discrimination, the Title IX Coordinator (or a designee) will promptly contact the affected student or employee to:

- discuss the availability of supportive measures and consider their wishes with respect to supportive measures;
- explain the district's procedure and resolution options, including the informal resolution process if appropriate; and
- provide a copy of the applicable District policy and procedure, including the district's grievance procedure.

A. Supportive Measures

Decisions about supportive measures need to be made by someone trained on Title IX/supportive measures and documented. Additionally, parties now have a right to have decisions about supportive measures reviewed by an impartial employee who is also trained and has higher authority than the person who determined supportive measures. However, the process required is not as formal as appeals. Therefore, to ensure appropriate training and compliance, it is recommended that the district designate an Administrator(s) who will be responsible for supportive measures and designate a Supportive Measure Review Administrator (SMRA) who has authority over that person. The Administrator can be a counselor, behavior interventional specialist, assistant principal, principal or the Title IX Coordinator. The SMRA can be the Principal, the Title IX Coordinator, or the Superintendent so long as whoever serves as the SMRA is trained and has higher authority.

Upon notice of allegations of sex discrimination, a district administrator will offer and coordinate supportive measures as appropriate for the Complainant and Respondent.

At the time that supportive measures are offered, if a complaint has not been filed, the district will provide written notice that the Complainant may file a complaint with the district at any time. The administrator will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

If a Complainant does not want to file a complaint or engage in informal resolution options, a reported concern may be resolved by offering and, upon request, providing supportive measures

(only). The administrator will document any supportive measures provided, and provide that information to the Title IX Coordinator.

1. Providing Supportive Measures

Supportive measures are designed to protect the safety of the parties or the district's educational environment. They also provide support during the informal resolution process and grievance process. They are designed to restore or preserve access to the district's education program or activity. They are offered without fee or charge to the Parties, and must not unreasonably burden either party.

Supportive measures cannot be imposed against a Respondent for punitive or disciplinary reasons.

Supportive measures are available to both parties and may vary depending on what is reasonably available, but may include:

- A request that an administrator address allegations by meeting with the Respondent(s) (with or without the Complainant) to discuss concerning behavior, school policies, and expectations. Such a conversation must be non-disciplinary, non-punitive, and Respondent(s) cannot be required to attend such meetings, nor are they required to provide any information if they attend. If it takes place, the conversation will be documented.
- An opportunity for a Complainant student or employee, upon request and voluntarily, to meet with an Administrator and an alleged harasser to explain to the alleged harasser that their conduct is unwelcome, offensive, or inappropriate, either in writing or face-to-face;
- A written statement from a Complainant student or employee to an 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's sex-based harassment policy without identifying the Complainant;
- Developing a safety plan; adjustments;
- Mutual restrictions on contact between the parties;
- Increased security and monitoring of certain areas of the campus or school building;
- Providing employee and/or student training;
- Remote or alternative learning environments for students or leaves of absence for employees;
- Counseling or a referral to the Employee Assistance Program;
- Changes in class or extracurricular or any other activity;
- Modifications of work or class schedules, including extensions of deadlines and other course-related either there is or is not a comparable alternative; and
- Training and education programs related to sex discrimination or harassment.

If either party is a student with a disability, the Title IX Coordinator may consult, as appropriate, with an individual or office designated to provide support to students with disabilities about how to comply with Section 504 or the IDEA in the implementation of supportive measures.

For allegations other than sex-based harassment or retaliation, the district is not required to alter the alleged discriminatory conduct for the purpose of providing a supportive measure.

2. Privacy and Supportive Measures

To ensure the parties' privacy, the district must not disclose supportive measures to anyone other than the people to whom they apply about the supportive measures, including the other party.

Except, the district may disclose some information to carry out the purposes of supportive measures, including to address conduct that reasonably may constitute sex discrimination. For example, the district may need to tell specific staff, the other party, or a third party of a supportive measure to implement or document it. But the district may not need to disclose why the supportive measure is being provided.

The following are other exceptions that may apply:

1. A person with the legal right to consent to the disclosure provides written consent.
2. The information is disclosed to a parent, guardian, or other authorized legal representative of the person at issue.
3. As required by laws, regulations, or to comply with State or Federal grant awards or other funding agreement.
4. When required by Federal, State or local law, including FERPA, and those laws do not conflict with Title IX.

Application of State laws may prohibit disclosure even where permissible under those exceptions. As stated in Policy 3230 - Searches of Students and Student Privacy, Washington State law provides that at certain ages, students attain the right to decide for themselves what records will remain confidential, even from their parents, and what activities the student will participate in.

Additionally, as stated in Procedure 3211P, information about a student's gender identity, legal name, or assigned sex at birth may constitute confidential medical or educational information. Disclosing this information to others may violate privacy laws. To ensure the safety and well-being of the student, school employees should not disclose a student's transgender or gender-expansive status to others, including other school personnel, other students, or the parents of other students, unless the school is (1) legally required to do so or (2) the student has authorized such disclosure.

3. District Modification or Termination of Supportive Measures

As appropriate, the district may modify or terminate supportive measures at the conclusion of an informal resolution or investigation process, or the district may continue them beyond that point.

4. Opportunity for Modification or Reversal of Supportive Measures

The district must also provide a party with the opportunity to seek additional modification or termination of a supportive measure applicable to them if circumstances change materially.

If either party wants to modify or reverse the district's decision to provide, deny, modify, or terminate supportive measures applicable to them, they may request an opportunity for modification or reversal from the Supportive Measure Review Administrator.

B. Title IX Coordinator Determinations and Explanation of Applicable Policies

1. Who Can File Under this Procedure

For complaints of sex-based harassment, these people also have the right to file complaints under this procedure:

- a person who meets the definition of "Complainant" above,
- a parent, guardian, or other authorized legal representative of the Complainant,
- or the Title IX Coordinator
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For other forms of sex discrimination that are not sex-based harassment, the following people have the right to make a complaint under this procedure:

- a person who meets the definition of "Complainant" above,
- a parent, guardian, or other authorized legal representative of the Complainant,
- the Title IX Coordinator,
- any student or employee, or
- any other person participating or attempting to participate in a district education program or activity at the time of the alleged sex discrimination.

If an individual wishes to file a sex-based discrimination complaint, but does not fit this definition, they should use the process for students in Procedure 3210P or the process for employees or applicants in Procedure 5010P.

If a person filed a complaint of sex-based harassment but does not have the right to make that type of complaint, the Title IX Coordinator or designee will inform the person, in writing, that the district cannot proceed with an investigation. The notice will also state that the district will treat the complaint as a report of sex-based harassment and take steps, as necessary, to address the information to the extent that it is feasible to do so while maintaining the confidentiality of the affected student or district employee.

2. Determining What Procedure Applies

The Title IX Coordinator or a designee will determine what procedure applies. If the sex discrimination alleged occurred prior to August 1, 2024, and is not ongoing, the Title IX Coordinator will inform the affected student or district employee of the policies and procedures in effect at the time of the alleged discriminatory act or conduct and proceed accordingly under those.

If the alleged sex-based discriminatory act or conduct occurred on or after August 1, 2024, this procedure will apply.

When ongoing sex-based harassment is alleged, the district will consider the totality of circumstances and, therefore, will look at all incidents of alleged harassment and apply the policy that was in place on the date of the latest incident of harassment.

If more than one discriminatory event is alleged or other types of discrimination are alleged, the district will consider each alleged discriminatory act and may apply different policies to each event or may apply a single policy provided it is the policy that provides the highest level of due process.

C. Other Considerations

1. Students with Disabilities

If either party is a student with a disability, the Title IX Coordinator or a designee will consult with one or more members, as appropriate, of the student's Section 504 or Individualized Education Program (I.E.P.) team to determine how to comply with Section 504 and IDEA requirements throughout the implementation of this grievance procedures.

2. Discipline Prohibit Until Determination

A Respondent who is accused of sex discrimination 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 that the Respondent was responsible for the sex discrimination at the conclusion of the grievance process.

3. Emergency Removals for Alleged Sex-Based Harassment under Title IX

The district may remove a student Respondent from school on an emergency basis consistent with Policy and Procedure 3241 – Student Discipline and the associated student discipline regulations for emergency expulsion *provided* that the district:

- (1) undertakes an individualized safety and risk analysis,
- (2) determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and
- (3) provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

Such removal does not modify any rights of students under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, or the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq.

The district may also place an employee Respondent on administrative leave from employment responsibilities during the grievance process. Such leave does not modify any rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, or the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq.

IV. Informal Resolution

If a report or notice provided to the district alleges sex discrimination by an individual or group of individuals, the parties may elect to participate in an informal resolution process with a district designee trained on impartiality and the district's informal resolution processes.

The purpose of informal resolution is to provide the parties with an opportunity to resolve the allegations and reach a mutually acceptable resolution without an investigation and determination of responsibility under Section V.G below.

It is not necessary to pursue informal resolution before filing a complaint and requesting an investigation under Section V below.

Either party may request informal resolution at any time, including after a complaint has been filed but before a complaint determination is issued under Section V.G below.

The informal resolution process is at the discretion of the district's Title IX Coordinator or a designee. However, as required by Federal law, the district does not allow informal resolution for allegations that an employee engaged in sex-based harassment of a district student.

The process requires the parties' voluntary, written consent. Before beginning the informal resolution process the parties must receive notice that explains:

1. the allegations,
2. the requirements for the process,
3. the right to withdraw from the process and to start or continue the grievance process (described in Section V) any time prior to reaching agreement,
4. if a resolution agreement is reached the parties will be prevented from start or continuing the grievance process of the same allegations,
5. potential terms that can be requested or offered, include but are not limited to restrictions on contact or participation in programs, activities, attendance at specific events,
6. notice that any agreement is only binding on the parties, and
7. what information will be kept and how the district could disclose information in grievance procedures if that process is resumed.

A. Accepted Responsibility by the Respondent

The Respondent may accept responsibility for any or all of the allegations at any point during the involuntary resolution process. If the Respondent indicates an intent to accept responsibility for **all** allegations that violate district policy, the ongoing investigation process will be paused, and the Title IX Coordinator will determine whether informal resolution is an option.

If informal resolution is available, an Informal Resolution Facilitator will determine whether all parties and the district are able to agree, in writing, on responsibility, restrictions, sanctions, restorative measures, and/or remedies.

This informal resolution is not subject to appeal once all parties indicate their written agreement to all resolution terms.

When a signed, written resolution agreement is reached, the Superintendent will accept a finding that the Respondent is in violation of the district's policy and accept agreed-upon restrictions and remedies. The appropriate sanction(s) or responsive actions will be promptly implemented by the Title IX Coordinator and appropriate administrators to effectively stop the discrimination or harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

When the parties or the district cannot agree on all terms of accepted responsibility by the Respondent, the parties can attempt informal resolution between the parties or proceed with a complaint.

B. Informal Resolution Between the Parties

The purpose of informal resolution between the parties is to provide the parties an opportunity to reach a mutually acceptable resolution without an agreed upon finding of responsibility or an investigation and determination of responsibility under Section V.G below.

The parties will have forty-five days to engage in the informal resolution process, unless there is a good cause for extension.

If a complaint was filed, the Title IX Coordinator has discretion to determine if an investigation will be paused, limited, or continued during the informal resolution process.

If the parties agree to a resolution at the conclusion of the informal resolution process, they will not be able to initiate or resume a complaint under Section V.B. concerning the same allegations.

If either party withdraws from the informal resolution process or the process has not concluded within forty-five calendar days without a good cause extension, then the Informal Resolution Facilitator or Title IX Coordinator will end the informal resolution process.

When the informal resolution process ends without a resolution agreement between the parties:

- If no complaint was filed, the Title IX Coordinator will provide written notice to the parties and remind the Complainant of the right to file a complaint.
- If a complaint was filed and the Complainant has not withdrawn the entire complaint in writing, the Title IX Coordinator will provide the parties with written notice that the complaint, in whole or part, will be investigated and a determination issued under Section V.G of this procedure.

C. Mediation with the District for Complaints of General Discrimination

The district may not require the waiver of the right to an investigation and adjudication of a complaint of sex discrimination 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.

If the complaint does not have an individual Respondent because it concerns a policy or practice of the district, at any time during the complaint procedure, the district may, at its own expense, offer mediation. The Complainant and the District may agree to extend the complaint process deadlines 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. Either party may terminate mediation 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:

- 1) Be an employee of any school 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
- 2) Have a personal or professional conflict of interest. A mediator is not considered an employee of the district solely because they serve as a mediator.

If the parties reach an agreement through mediation, they may execute a legally binding agreement that sets forth the resolution and states that all discussions, including both verbal statements and any written notes or documents, that occurred during the course of mediation will remain confidential and privileged and may not be used as evidence in any subsequent complaint, due process hearing, or civil proceeding. However, the following will not be considered privileged and may be disclosed as necessary or required by law, such as:

- Any resulting written agreement signed by all the parties;
- Threats of violence or plans to commit or conceal a crime;
- Unreported child abuse that falls under mandatory reporting requirements; and
- Other exceptions to privilege are spelled out in Washington's Uniform Mediation Act at RCW 7.07.050.

The agreement must be signed by the Complainant and a district representative who has the authority to bind the district.

V. Grievance/Complaint Procedure

A. Basic Requirements of the District's Sex discrimination Grievance Procedures

1. Equitable Treatment and No Conflicts of Interest or Bias

The district will treat Complainants and Respondents equitably.

The district presumes that the Respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

The district requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. A decisionmaker may be the same person as the Title IX Coordinator or investigator.

2. Extension of Timeframes

The district's process allows for the reasonable extension of timeframes on a case-by-case basis when agreed to by the Complainant or if exceptional circumstances related to the complaint investigation require an extension of the time limit.

3. Privacy and Personally Identifiable Information

The district will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to:

- obtain and present evidence, including by speaking to witnesses;
- consulting with their family members or confidential resources such as medical providers, therapists, sexual assault resource centers, or others; or
- otherwise preparing for or participating in the grievance procedures.

As stated in Policy 3230 - Searches of Students and Student Privacy, Washington State law provides that at certain ages, students attain the right to decide for themselves what records will remain confidential, even from their parents, and what activities the student will participate in.

The district must not disclose personally identifiable information (PII) obtained while complying with this procedure except in the following circumstances:

- (1) To carry out the purposes of the district's obligations under this procedure, including to investigate and take other actions to address conduct that reasonably may constitute sex discrimination in a district education program or activity;
- (2) When the district has obtained prior written consent from a person with the legal right to consent to the disclosure;
- (3) When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose PII is at issue;
- (4) As required by State or Federal law, regulations, or the terms and conditions of a State or Federal award, including a grant award or other funding agreement; or
- (5) To the extent such disclosures are not otherwise in conflict with State or Federal laws, when required by State or local law, such as when there is reasonable cause to believe that a child has suffered sexual abuse (RCW 26.44.030), or when permitted under FERPA, 20 U.S.C. 1232g, or its implementing regulations, 34 C.F.R. part 99.

4. Prohibition of Retaliation

Retaliation is prohibited from the district, a student, or an employee or other person authorized by the district to provide any aid, benefit, or service under the district's education program or activity. Retaliation includes student-to-student retaliation.

5. Credibility Determinations

Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

6. Relevant Evidence

The district will objectively evaluate all evidence that is relevant and not otherwise impermissible—including both inculpatory and exculpatory evidence. "Relevant" means related to the allegations of sex discrimination under investigation as part of these grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

7. Impermissible Evidence

The following types of evidence and questions seeking that evidence are impermissible (i.e., will not be accessed or considered, except by the district to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness unless the district obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex-based harassment or preclude a determination that sex-based harassment occurred.

B. Grievance/Complaint Process when a Complaint is Received

If the district receives a complaint under this procedure, the Title IX Coordinator will ensure the complaint is evaluated and, if appropriate, investigated.

If the Title IX Coordinator has a conflict of interest, they will delegate their authority to participate in this process as necessary to avoid any potential conflicts of interest.

Upon receipt of a complaint, if they have not already been offered, the Title IX Coordinator will offer supportive measures to both parties. If necessary, the Title IX Coordinator may gather additional information from the Complainant to understand the parties involved, the conduct allegedly constituting sex discrimination, and the date and location of the alleged incident(s), if known.

C. Dismissal of a Complaint

The district may dismiss a complaint of sex discrimination if the district determines:

- The district is unable to identify the Respondent after taking reasonable steps to do so.
- The Respondent is not participating in the district's education program or activity and is not employed by the district.
- The Complainant provided voluntary, written notice that they want to withdraw any or all of the allegations in the complaint, the Title IX Coordinator declines to open a complaint, and any allegations that were not withdrawn (if any), even if proven, would not constitute sex discrimination under Title IX.
- The district determines that the conduct alleged in the complaint, even if proven, would not constitute sex discrimination. Before dismissing such a complaint, the district will make reasonable efforts to clarify the allegations with the Complainant.
- The district determines that the complaint lacks sufficient detail to objectively understand what sex-based discriminatory acts are alleged, and when and where they occurred. Before dismissing the complaint for lack of sufficient detail, the district will provide the Complainant with notice, in writing, of what information is needed and that the district may dismiss the complaint if the information is not received within ten (10) calendar days. Such a dismissal will not prevent the Complainant from filing other complaints in the future.

Upon dismissal, the district will promptly notify the Complainant of the basis for the dismissal in writing. If the dismissal occurs after the Respondent has been notified of the allegations, then the district will also simultaneously notify the Respondent of the dismissal and the basis for the dismissal.

The district will provide the Complainant with notice of the opportunity to appeal the dismissal of a complaint within ten (10) calendar days of the dismissal decision by submitting a written notice of appeal to:

Superintendent or designee

The dismissal notice will also specify that the dismissal may be appealed based on the following:

- procedural irregularity that would change the outcome,
- new evidence that would change the outcome and that was not reasonably available when the dismissal was made, and/or
- the Title IX Coordinator or decisionmaker had a conflict of interest or bias for or against either party that would change the outcome.

When a complaint is dismissed, the district will, at a minimum:

- offer supportive measures to the Complainant as appropriate
- offer supportive measures to the Respondent, as appropriate, if the Respondent was notified of the allegations and
- take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the district's education program or activity.

Dismissal does not preclude action under another district policy or procedure.

D. Dismissal Appeal Process

If the dismissal is appealed, the district will use the Level Two Appeal as described in Section V.H for the appeal of the dismissal.

The district will notify the parties of any dismissal appeal, including notice of the allegations if notice was not previously provided to the Respondent.

- Implement appeal procedures equally for the parties;
- Ensure that the decisionmaker for the appeal (1) has been trained consistent with the Title IX regulations and (2) did not take part in any investigation of the allegations or the dismissal of the complaint;
- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result.

E. Notice of Allegations:

The district will acknowledge receipt of the formal complaint by providing the following written notice to the parties:

- A copy of the district's sex discrimination complaint procedure and, if appropriate, any informal resolution process available.
- Notice of the allegations of sex discrimination available at the time of the notice with sufficient information to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s), if known.
- A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of the evidence and, upon request, an equal opportunity to access such evidence.
- Notice that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility for alleged sex discrimination is made at the conclusion of the investigation process.
- Notice of the district's prohibition of retaliation and any provision in student conduct policies and procedures that prohibit false statements or submitting false information.

The district may consolidate complaints of sex discrimination against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against another party when the allegations of sex discrimination arise out of the same facts or circumstances. However, the district will not consolidate complaints if consolidation violates the Family Educational Rights and Privacy Act (FERPA) and the District has not obtained prior written consent from the parents or eligible students to the disclosure of their education records. This determination will be made on a case-by-case basis.

If, in the course of an investigation, the district decides to investigate additional allegations of sex discrimination by the Respondent toward the Complainant that are not included in the notice provided or that are included in a complaint that is consolidated, the district will notify the parties of the additional allegations.

F. Investigation:

The district will provide for adequate, reliable, and impartial investigation of a complaint. The investigator must be trained, impartial, and without a conflict of interest or bias for or against either party.

1. Time for Investigation

A decision based on a prompt, thorough, and effective investigation will be issued within 30 days of the complaint, unless the parties agree or there are exceptional circumstances related to the complaint that warrant an extension. In the event an extension is needed, the district will provide written notice to the parties of the reason for the extension and the anticipated response date within the following thirty days (and for every thirty days after that) until a decision is issued.

2. Standard of Proof

The district adopts preponderance of the evidence as the standard of proof it will use in reaching decisions regarding complaints. The burden is on the district—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

3. Investigation Requirements

Once an investigation is started, the Title IX Coordinator will appoint an Investigator(s) to conduct it. The Investigators may be any properly trained Investigator. The district's investigator can be the Title IX Coordinator, another investigator, the District's Superintendent, or someone hired by the district.

The investigation of a sex discrimination 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.

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- Provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible.
 - Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.
 - Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
 - Provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible. This process is described below.
 - 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 a parent, guardian, legal representative, or other adult of their choice.

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.

4. Witness' and Parties' Rights

Student Complainants, Respondents, and witnesses, and witnesses from outside the district's community cannot be required to participate in investigation or resolution processes but are encouraged to cooperate with the district's investigations and to share what they know about a Complaint.

Staff (not including Complainant and Respondent) are required to cooperate with and participate in the district's investigation and resolution process. If an employee represented by a union reasonably concludes that discipline could result from information provided during an interview, the employee shall be entitled to union representation during the interview. If the employee reasonably determines during the interview that discipline could result, the interview shall be suspended until representation is available.

5. Review of Evidence Prior to Determination

At least ten (10) days prior to a determination regarding responsibility, the district shall provide the parties with a report that provides equal written notice as to the findings of the investigation and provides a fair summary of any relevant evidence that is directly related to the allegations raised in the complaint and obtained as part of the investigation. The notice shall inform the parties that:

- The report findings will be provided to the decisionmaker
- They are being given an accurate description of the evidence and, upon request, they have an equal opportunity to inspect and review relevant and not otherwise impermissible evidence.

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- They have ten (10) days from receipt of the notice to review the description of the evidence, request to review the evidence, and submit a written response for the decisionmaker to consider prior to making a decision.
 - Both parties are being given an equal opportunity to ask specific, relevant questions about the evidence or identify areas where they believe further investigation is necessary.
 - 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.

If the parties request to inspect and review the relevant evidence, the district will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures.

Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized. However, the district may redact information if it has not received voluntary, written consent to disclose information that is privileged or was made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional made in connection with the provision of treatment to the party.

G. Level One – Superintendent's Response and Decision

At the conclusion of the investigation and within thirty (30) calendar days of receipt of the complaint, the Superintendent or a designee must issue a written determination of responsibility regarding the alleged sex discrimination.

Prior to issuing a decision, the District's Superintendent or designee will objectively review all evidence gathered in the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

If the investigator was not the District's Superintendent or designee, nothing in this procedure prohibits them from making findings or recommending any decision or remedies. However, the District's Superintendent or designee will not be bound by the recommendations and is responsible for the determination of responsibility and remedies, if any. The District's Superintendent or designee may also question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination prior to issuing their determination.

The decision will be issued within 30 days 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 provide written notice to the parties and the anticipated response date.

1. Determination of Whether Sex Discrimination Occurred

After an investigation and evaluation of all relevant and not otherwise impermissible evidence, the District decisionmaker will use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.

The Superintendent must issue written notice to the parties at the same time. The written notice must include:

- Identification of the allegations potentially constituting sex discrimination under Title IX regulations;
- Findings supporting the determination;
- An application of the district's policy prohibiting sex discrimination to the facts and a statement of conclusion as to whether a preponderance of the evidence substantiated that the Complainant was subjected to sex discrimination;
- If sex discrimination was substantiated, then the decision must also include 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; and 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; and
- Notice of the parties' right to appeal to the school board and the necessary filing information.

At the time the district responds to the parties, the district must send a copy of the response to the Office of the Superintendent of Public Instruction (OSPI).

Any corrective measures deemed necessary will be instituted as quickly as possible, but in no event more than thirty (30) days after the Superintendent mailed a written decision unless a student 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.

2. Disciplinary Sanctions and Remedies

Following a determination that sex-based harassment occurred, the district may impose disciplinary sanctions. "Disciplinary sanctions" means consequences imposed on a Respondent following a determination under these grievance procedures that the Respondent violated the recipient's prohibition on sex discrimination. Disciplinary sanctions against students will be in

accordance with 3241/3241P – Student Discipline. Disciplinary sanctions against employees will be in accordance with 5281 – Disciplinary Action or Discharge.

The district may also provide remedies. “Remedies” means measures provided, as appropriate, to a Complainant or any other person the district identifies as having had their equal access to the recipient’s education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person’s access to the recipient’s education program or activity after a recipient determines that sex discrimination occurred.

Remedies may include but are not limited to:

- A continuation of supportive measures
- Referrals to counseling, health services, or the Employee Assistance Program
- Course and registration adjustments, such as retroactive withdrawals or changes in schedules
- Education to the individual and/or the community
- Permanent or temporary alteration of work arrangements for employees
- Provision of school safety escorts
- Climate surveys
- Policy modification and/or training
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

H. Level Two – Appeal to the Board of Directors

If a Complainant or Respondent(s) disagrees with the Superintendent’s or designee’s written decision, the disagreeing party may appeal the decision to the district’s board of directors or a board designee by filing a written notice of appeal with the secretary of the board within ten (10) calendar days following the date upon which the Complainant received the response.

1. Notice of Appeal and Hearing

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.

The board shall schedule a hearing to commence by the twentieth (20th) calendar day following the filing of the written notice of appeal unless otherwise agreed to by the Complainant and the Superintendent or for good cause.

2. Appeal Decisionmaker

The board’s appeal must be heard by an individual or group of individuals who are impartial and do not have any conflicts or bias for any of the parties. The appeal hearing officer/decisionmaker for the appeal must also be trained consistent with the requirements of Title IX, a Federal law, for appeal decisionmakers of sex discrimination.

The board may delegate its authority for the hearing/decision-making to an individual or group. However, the board cannot delegate its authority to the Superintendent or anyone under the Superintendent's authority. The board will also ensure that the appeal hearing officer/decisionmaker for the appeal is not an employee of the district, nor the same decisionmaker who reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator. An appeal hearing officer/decisionmaker for the appeal is not considered an employee of the district solely because they receive payment to serve as the appeal hearing officer/decisionmaker for the appeal.

3. The Appeal/Hearing Process

All parties will be allowed a reasonable, equal opportunity to present such witnesses and testimony as the board or its designee deems relevant and material in support of or challenging the outcome of the initial determination.

Unless otherwise agreed to by the appellant(s), the board or its designee will render a written decision within thirty (30) calendar days following the filing of the notice of appeal and provide the Complainant with a copy of the decision. The decision of the board will be provided in a language the Complainant can understand, which may require language assistance for Complainants with limited English proficiency in accordance with Title VI of the Civil Rights Act.

The decision will include notice of the Complainant's right to appeal to the Superintendent of Public Instruction and will identify where and to whom the appeal must be filed. The district will send a copy of the appeal decision to the office of the Superintendent of public instruction.

I. Level Three - Complaint to the Superintendent of Public Instruction

If the Complainant or Respondent disagrees with the decision of the board of directors, or if the district fails to comply with this procedure, the Complainant may file a complaint with the Superintendent of Public Instruction.

A complaint must be received by the Superintendent of Public Instruction on or before the twentieth (20) calendar day following the date upon which the Complainant received written notice of the board of directors' decision unless the Superintendent of Public Instruction 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-discrimination 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.

Upon receipt of a complaint, the Office of the Superintendent of Public Instruction may open an investigation, which may include conducting an independent on-site 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 board. Following the investigation, OSPI will make an independent determination as to whether the district has failed to comply with RCW 28A.642.010 or Chapter 392-190, W.A.C. 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.

J. Level Four - Administrative Hearing

A Complainant or school district that desires to appeal the written decision of the Office of the Superintendent of Public Instruction may file a written notice of appeal with OSPI within thirty (30) calendar days following the date of receipt of that office's written decision. OSPI will conduct a formal administrative hearing in conformance with the Administrative Procedures Act, Chapter 34.05, RCW.

VI. Definitions of Prohibited Conduct

The sections below describe the specific forms of legally prohibited sex discrimination, sex-based harassment, and retaliation that are also prohibited under District Policy. Speech or conduct protected by the First Amendment will not be considered a violation of the District's Policy, though supportive measures will be offered to those impacted.

All offense definitions below encompass actual and/or attempted offenses.

“Consent,” as defined in this policy, must be affirmative and consistent with RCW 28A.300.475, “affirmative consent means a conscious and voluntary agreement to engage in sexual activity as a requirement before sexual activity.”

“Sex discrimination” means discriminatory different treatment with respect to a person’s employment or participation in a District education program or activity based on sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. There are three types of sex discrimination, which are defined below: (A) different (or disparate) treatment, (B) disparate impact, and (C) sex-based harassment

A. **“Different (or disparate) treatment discrimination” means any intentional differential treatment of a person or persons that is based on a person’s actual or perceived sex and that:**

- Excludes a person from participation in;
- Denies a person benefits of; or
- Otherwise adversely affects a term or condition of a person’s participation in a Recipient program or activity

B. **“Disparate Impact Discrimination” means policies or practices that appear to be neutral unintentionally result in a disproportionate impact on the basis of sex that:**

- Excludes a person from participation in;
- Denies a person benefits of; or
- Otherwise adversely affects a term or condition of a person’s participation in a Recipient program or activity.

C. **“Sex-based harassment” is a form of sex discrimination and means**

- sexual harassment and other harassment
- on the basis of sex, including on the basis of
 - sex stereotypes,
 - sex characteristics,
 - pregnancy or related conditions,
 - sexual orientation, and
 - gender identity.

There are different types of sex harassment, including “quid pro quo harassment,” “hostile environment harassment,” and certain specific sexual offenses defined further below.

1. **“Quid pro quo harassment”**

- An employee, agent, or other person authorized by the district
- to provide an aid, benefit, or service under the district’s education program or activity
- explicitly or impliedly conditioning the provision of such an aid, benefit, or service
- on a person’s participation in unwelcome sexual conduct.

2. **“Hostile environment harassment,” which is defined as:**

- “Unwelcome sex-based conduct that,
- based on the totality of the circumstances,

-
- is subjectively and objectively offensive and
 - is so severe or pervasive
 - that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment)."

Because students and employees 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. Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- a) The degree to which the conduct affected the Complainant's ability to access the recipient's education program or activity;
- b) The type, frequency, and duration of the conduct;
- c) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- d) The location of the conduct and the context in which the conduct occurred; and
- e) Other sex-based harassment in the recipient's education program or activity.

3. **“Sexual assault” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. This includes:**

a. **Rape:**

- Penetration by the Respondent, no matter how slight,
- of the vagina or anus,
- with any body part or object, or
- oral penetration by a sex organ of the Respondent,
- without the consent of the Complainant.

b. **Fondling:**

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- The touching of the private body parts of the Complainant (buttocks, groin, breasts) by the Respondent,
- for the purpose of sexual gratification,
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental or physical incapacity.

c. **Sodomy**

- Oral or anal penetration,
- Of the Complainant by the Respondent

-
- without the consent of the Complainant,
 - including instances where the Complainant is incapable of giving consent
 - because of their age or
 - because of their temporary or permanent mental or physical incapacity
 - d. **Sexual Assault with an Object**
 - Respondent's use of an object or instrument
 - to unlawfully penetrate, however slightly, the genital or anal opening of the body of the Complainant,
 - without the consent of the Complainant,
 - including instances where the Complainant is incapable of giving consent
 - because of their age or
 - because of their temporary or permanent mental or physical incapacity
 - e. **Statutory Rape:**
 - Sexual intercourse,
 - with a person who is under the statutory age of consent
 - A person who is under age 16 OR
 - A person under the age of 18 (16 or 17) if the other person is more than 5 years (60 months) older than them
 - f. **Incest:**
 - Sexual intercourse,
 - between persons who are related to each other,
 - within the degrees wherein marriage is prohibited by Washington State law.
4. **“Dating violence” means violence committed by a person:**
1. Who is or has been in a social relationship of a romantic or intimate nature with the victim and
 2. Where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship, (2) the type of relationship, and (3) the frequency of interaction between the persons involved in the relationship.
5. **“Domestic violence” means felony or misdemeanor crimes committed by a person who:**
1. Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the district, or a person similarly situated to a spouse of the victim;
 2. Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
 3. Shares a child in common with the victim; or

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4. Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

 6. **“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:**
 1. Fear for the person’s safety or the safety of others; or
 2. Suffer substantial emotional distress.

Under State law, sex-based harassment may also be:

- acts of sexual violence
- unwelcome sexual or gender-directed conduct or communication that interferes with an individual’s educational performance or creates an intimidating, hostile, or offensive environment;
- unwelcome sexual advances;
- unwelcome requests for sexual favors;
- sexual demands when submission is a stated or implied condition of obtaining an educational benefit;
- sexual demands where submission or rejection is a factor in an academic or other school-related decision affecting an individual.

D. “Retaliation” means intimidation, threats, coercion, or discrimination

- against any person
- for the purpose of interfering with any right or privilege secured by Title IX or this procedure or
- because the person
 - reported information, made a complaint, was a witness or
 - provided information, assisted, or participated or
 - refused to participate in any manner
- in an investigation or appeal under Title IX or this process.

VII. Other Complaint Options

Office for Civil Rights (O.C.R.), U.S. Department of Education

O.C.R. enforces several federal civil rights laws, which prohibit discrimination in public schools on the basis of race, color, national origin, sex, disability, and age. File complaints with O.C.R. 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 (RCW 49.60), which prohibits discrimination in employment and 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

Lynden School District No. 504
BOARD POLICY

Policy: 3205-P1

For Complaints involving employee-on-employee conduct:

Equal Employment Opportunity Commission (EEOC)

Seattle Field Office

Federal Office Building

909 First Avenue, Suite 400

Seattle, WA 98104-1061

Phone 1-800-669-4000

Fax 206-220-6911

TTY 1-800-669-6820

ASL Video Phone 844-234-5122