

**TITLE IX GRIEVANCE PROCEDURES**  
**Independent School District No. 181, Brainerd Public Schools**

The purpose of these procedures is to provide for the prompt and equitable resolution of complaints based on sex discrimination, including complaints of sexual harassment or sexual violence, in violation of Title IX of the Education Amendments of 1972 ("Title IX"), and violation of District policies that prohibit these types of discrimination. These procedures shall be available in every school site administrative office, posted on the District website, and included in student and employee handbooks and otherwise published to the extent required by law.

These procedures outline the District's process for resolving complaints involving sex discrimination. Any complaints involving sexual harassment, as defined below, or retaliation for reporting sexual harassment will be subject to the separate, more specific grievance process outlined in these procedures.

**I. SEX DISCRIMINATION COMPLAINTS THAT DO NOT INVOLVE SEXUAL HARASSMENT**

Complaints of sex discrimination that do not constitute sexual harassment, as defined below, or retaliation from making a complaint of sexual harassment should be reported to the building principal or building supervisor. The building principal or supervisor is then responsible for notifying the District's Title IX Coordinator of the complaint. If a complaint involves the building principal or supervisor, it should be reported directly to the Title IX Coordinator. The Title IX Coordinator will ensure an investigation is completed in accordance with the requirements of School Board Policy 413 or 522. The District's Title IX Coordinator is the Director of Human Resources. The Title IX Coordinator's contact information is:

Director of Human Resources  
Brainerd Public Schools  
804 Oak Street  
Brainerd, MN 56401  
(218) 454-6960 – Phone  
titleix@isd181.org

**II. GRIEVANCE PROCEDURE FOR SEXUAL HARASSMENT COMPLAINTS**

The grievance process below applies to allegations of sexual harassment and retaliation related to sexual harassment complaints pursuant to Title IX requirements effective August 14, 2020.

**Definitions**

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

"Education Program or Activity" – A District education program or activity includes locations, events, or circumstances over which the District has exercised substantial control over both the respondent and the context in which alleged sexual harassment occurs.

"Formal Complaint" – A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the District investigate the allegation of

sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the District's education program or activity.

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

"Sexual Harassment" – Conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the District conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity; or
- (3) "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).

"Supportive Measures" -- Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

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

#### **Basic Requirements for Grievance Procedures**

At all stages these grievance procedures are subject to the following requirements:

- (1) Complainants and respondents will be treated equally by (1) providing remedies where a determination of responsibility for sexual harassment has been made against a respondent and (2) following this grievance process before the imposition of any disciplinary action or other actions (that are not supportive measures) against a respondent. Remedies must be designed to restore or preserve equal access to the District's education program or activity. Such remedies may include supportive measures. Remedies may also include disciplinary or punitive action against a respondent upon a determination of responsibility following the grievance process.
- (2) All evidence must be objectively evaluated, including inculpatory and exculpatory evidence. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.

- (3) There will be a presumption that respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- (4) Individuals designated by the District as a Title IX Coordinator, investigator, decision-maker, or any person designated by the District to facilitate an informal resolution process must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- (5) Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process will receive the training required by 34 C.F.R. § 106.45(b)(1)(iii).
- (6) The standard of evidence used to determine responsibility is the preponderance of the evidence standard.
- (7) The District's representatives may not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- (8) The range of supportive measures offered by the District may include the following counseling, extensions of deadlines or other course-related or work-related adjustments, modifications of class or work schedules, campus escort services, mutual restrictions on contact between the parties, increased monitoring of certain areas, and other similar measures.

### **Step 1 – Notification to Title IX Coordinator**

Any instance of sexual harassment should be reported to the Title IX Coordinator. Any District employee who has actual knowledge of alleged sexual harassment *must* notify the Title IX Coordinator. Regardless of whether a formal complaint is filed, the District must respond to the alleged sexual harassment in a manner that is not clearly unreasonable in light of the known circumstances.

Upon being notified of an allegation of sexual harassment, the Title IX Coordinator will contact the complainant to discuss:

- (1) The availability of supportive measures with or without the filing of a formal complaint;
- (2) The complainant's wishes regarding supportive measures; and
- (3) The process for filing a formal complaint.

### **Step 2 – Formal Complaint**

A formal complaint alleging sexual harassment must be filed by a complainant or signed by the Title IX Coordinator and must request that the District investigate the allegation of sexual harassment. A complainant may file a formal complaint with the Title IX Coordinator in person, by mail or by e-mail. A formal complaint filed by the complainant must contain the complainant's physical or digital signature or must otherwise indicate under the circumstances that the complainant is the person filing the formal

complaint. The filing of a formal complaint will trigger the notice and investigation process outlined below.

If a formal complaint is not filed by the complainant or Title IX Coordinator, the Title IX Coordinator will still offer the complainant supportive measures and will work with the District's administration to ensure that the District's response to the concern is reasonable under the known circumstances.

A formal complaint must be dismissed by the Title IX Coordinator if (1) the conduct alleged in the formal complaint, even if proved, does not constitute sexual harassment as defined above or (2) the conduct alleged did not occur against a person in the United States. The dismissal of a formal complaint for Title IX purposes does not prevent the District from taking action under another provision of a code of conduct or Policy.

### **Step 3 – Notice to Parties**

Upon filing of a formal complaint, the Title IX Coordinator will notify the known parties, in writing, of the following:

- (1) These grievance procedures and any informal resolution process.
- (2) The allegations potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and the location of the alleged harassment, if known. The notice must also include:
  - a. A statement that the respondent of the complaint is presumed not responsible for the alleged conduct;
  - b. A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
  - c. A statement that the parties may inspect and review evidence;
  - d. Notice of any provision in the code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

This written notice must be provided as soon as possible, and at least within two (2) calendar days, not including weekends, after the formal complaint is filed unless good cause exists to provide later notice. Good cause may include considerations such as the absence of a party, concurrent law enforcement activity, the need for translation, or the need to accommodate a disability. 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, notice of the additional allegations must be provided to the parties whose identities are known.

#### **Step 4 – Investigation**

The District designates its building principals as the representatives who will serve as investigators. However, depending on the circumstances, the District reserves the right to appoint a different investigator, including a third-party who is not a District employee. An investigation must commence as soon as possible after a formal complaint is filed and proper notice is provided to the parties.

The following standards will apply to an investigation under these procedures.

- (1) The District bears the burden of proof and is responsible for gathering evidence.
- (2) The District cannot access, consider, disclose, or otherwise use a party's records from a physician, psychiatrist, psychologist, or similar professional that are made and maintained in connection to the treatment of that party, unless the party (or a parent) provides voluntary, written consent.
- (3) Both parties must have an opportunity to present fact and expert witnesses, as well as other evidence.
- (4) Parties cannot be prohibited from discussing the allegations with others.
- (5) The District must provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied by an advisor of their choice, who may be an attorney, and not limit the party's choice or presence of advisor. However, the investigator may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties).
- (6) The investigator must provide reasonable advance written notice of the date, time, location, participants, and purpose for any meetings, including hearings or investigative interviews, to any invited or expected participant.
- (7) Both parties must be allowed to review all evidence.

The investigator must prepare an investigation report that fairly summarizes relevant evidence and provide a copy of the investigation report to each party and the party's advisor, if any, at least ten days before a determination of responsibility is made by the decision-maker. In addition, prior to completing the investigative report, the investigator must send all evidence to the parties or their advisors, if any, and provide the parties ten days to submit a written response.

#### **Step 5 – Determination of Responsibility**

The District designates its Assistant Superintendent as the decision-maker for purposes of these grievance procedures. However, depending on the circumstances, the District reserves the right to appoint a different decision-maker, including a third-party who is not a District employee. The Title IX Coordinator and the individual who served as the investigator may not be the decision-maker.

The District has opted not to provide live hearings as part of these grievance procedures. After the investigation report is provided to the parties, the decision-maker must allow for each party to submit written questions to any party or witness. The decision-maker determines whether the questions are

relevant and, if so, the decision-maker must send the questions to the party or witness, allow time for a written response, and provide the written response to the party who submitted the question. The decision-maker must also allow limited follow-up questions from each party. The decision-maker will have discretion to determine how much time will be allowed for preparing questions and responses, provided that the allotted amount of time is not inconsistent with the goal of securing a reasonably prompt resolution.

After the parties are provided an opportunity to submit written questions, the decision-maker will issue a written decision that includes the following information:

- (1) Identification of the allegations potentially constituting sexual harassment.
- (2) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held.
- (3) Findings of fact supporting the determination.
- (4) Conclusions regarding the application of the District's code of conduct to the facts.
- (5) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the District will impose on the respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided by the District to the complainant.
- (6) The District's procedures and permissible bases for the complainant and respondent to appeal.

#### **Step 6 – Appeals**

Any party may appeal the written decision. An appeal must be submitted, in writing, to the Superintendent within two (2) calendar days, not including weekends. An appeal may be based on the following:

- (1) Procedural irregularity that affected the outcome of the matter.
- (2) New evidence that was not reasonably available at the time the determination regarding responsibility or a dismissal was made and that could affect the outcome of the matter.
- (3) The Title IX Coordinator, investigator(s), or decision-makers(s) had a conflict of interest or bias for or against complaints or respondents generally or the individual complainant or responded that affected the outcome of the matter.

In the event of a timely appeal, the Superintendent will preside over the appeal. However, depending on the circumstances, the District reserves the right to appoint a different decision-maker for the appeal, including a third-party who is not a District employee. The decision-maker for the appeal will not be the initial decision-maker.

The decision-maker on the appeal will review the record developed during the grievance procedure and will be a written decision granting appropriate relief, which may include affirming the initial decision, modifying the initial decision, or overturning the initial decision. The written decision will be issued within five (5) days.

### **Informal Resolution**

At any time before a decision is made, the District may facilitate an informal resolution process, such as mediation, that does not involve a full investigation or decision regarding responsibility, as long as the parties receive written notice of the following:

- (1) The allegations.
- (2) The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations.
- (3) That at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.
- (4) Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The District must obtain the parties' voluntary, written consent to the informal resolution process and the District will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student. The Title IX Coordinator is responsible for coordinating available informal resolution options.

### **Interim Measures**

The District may remove a student from an education program or activity on an emergency basis, as long as the District does an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This is subject to any rights the student may have under the Individuals with Disabilities Education Act, Section 504, the ADA, or Minnesota's Pupil Fair Dismissal Act. The District may also place an employee on paid suspension during an investigation, subject to any requirements in an applicable collective bargaining agreement.

### **Discipline**

Employees and students may be disciplined if it is determined through this grievance procedure that sexual harassment has occurred. The range of disciplinary action for students includes, but is not limited to, in-school suspension, out-of-school suspension, expulsion, and exclusion. Students will retain any rights they may have under the Pupil Fair Dismissal Act.

The range of disciplinary action for employees includes, but is not limited to, a verbal or written reprimand, suspension without pay, and immediate termination. Employees will retain any rights they

may have to challenge discipline through a grievance process outlined in a collective bargaining agreement.

**No Retaliation**

Students, employees or parents who make complaints in good faith, must be free from retaliation, coercion, and reprisal in seeking resolution of their complaint. Furthermore, persons acting as witnesses to a complaint, in good faith, must be free from retaliation.

Retaliation is a separate violation distinct from the initial underlying sex harassment allegation. Claims of retaliation must be reported to the Title IX Coordinator and are subject to the grievance procedures outlined above.

**False Complaints**

Individuals who knowingly file a false or misleading complaint or who knowingly provide false or misleading information during the grievance process may be subject to appropriate disciplinary action.

**Delay of Timelines for Good Cause**

Any of the timelines outlined in these grievance procedures may be temporary delayed or extended for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons 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.