

Superintendent Procedure 3208SP.B Title IX Complaint Procedures

Approved by: s/Dr. Brent C. Jones Date: 8/22/23

Dr. Brent C. Jones, Superintendent



Determining Whether to Implement Additional Title IX Complaint Procedures

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, as well as the following 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 formal 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 school 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 to meet the criteria for a Title IX complaint, the district will conduct the investigation implementing these additional Title IX procedures.

Standard Complaint Process with Additional Title IX Requirements

The following sections outline the process the district will take to respond to complaints of sexual harassment under state law and Title IX.

- **Acknowledging a Formal Title IX Complaint**

The Title IX Coordinator will receive and assign for investigation all formal, written complaints of sexual harassment or information in the Coordinator's possession that they believe requires further investigation. The Coordinator will delegate their 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 or their designee will offer supportive measures to both parties.

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

- A copy of the district's sexual harassment policy and procedure in a language the parties can understand.
- Notice of the allegations of sexual harassment with sufficient time for the parties to prepare a response before any initial interview and with sufficient detail. 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.

- **Investigation of 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 proved, 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 Standard Complaint Process in Superintendent Procedure 3208SP.A*).

The district adopts preponderance of the evidence as the standard of proof it will use in reaching decisions regarding complaints. Under this standard, a decision-maker must determine if it is "more likely than not" that the alleged behaviors occurred as reported.

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;
 - Prior to the completion of an investigative report, 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, 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; and
 - After transmitting the investigative report to the parties, but before reaching a final determination regarding responsibility, the decisionmaker 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 does not use investigative hearings under this procedure and associated policy.

- **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 school district from removing a student from school on an emergency basis consistent with Board Policy No. 3200, Written Rules of Student Conduct; the Basic Rules of Seattle Public Schools; and the associated student discipline regulations for emergency removals.

- **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 does not offer informal resolution of sexual harassment allegations against a respondent who is an employee of the district; the district provides reasonably prompt time frames for the informal resolution process; and the district provides the parties with written notice disclosing the allegations, the requirements for the informal resolution process, and the circumstances in which the parties would be precluded from continuing with a formal resolution process for the same allegations.

A party has the 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. 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.

- **Superintendent's Response to a Formal Title IX Complaint**

At the conclusion of the investigation, the decision-maker (Superintendent or designee) 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 Superintendent's written determination 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 application of the Basic Rules of Seattle Public Schools (district rules of student conduct per Board Policy No. 3200) 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; and
- 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; and
- Notice of the parties' right to appeal and the necessary filing information.

The Superintendent's or designee's response will be provided in a language 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.

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.

Any corrective measures deemed necessary will be instituted as quickly as possible, but in no event more than thirty (30) days after the Superintendent's 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.

Approved: August 2023

Revised:

Cross Reference: Policy No. 3200; 3207; 3208; 3210; 4070; 5011; 5253; 5245; Superintendent Procedures 3207SP; 3208SP.A; 3210SP.A; 3210SP.B; 4110SP; 5011SP