

# SCHOOL DISTRICT OF PITTSVILLE BOARD POLICY

## BOARD OPERATIONS

### SCHOOL DISTRICT MISSION

### DISTRICT RESPONSE TO POSSIBLE TITLE IX VIOLATIONS; INCLUDING THE DISTRICT'S TITLE IX GRIEVANCE PROCEDURES

113-RULE

This rule has been established to facilitate the District's compliance with requirements of the federal regulations issued under Title IX of the Education Amendments of 1972 ("Title IX"). Specifically, this rule establishes expectations and procedures for promptly, effectively, and equitably responding to complaints, reports, and other notice of any conduct or policies that reasonably may constitute unlawful sex discrimination or retaliation, as prohibited in the District's education program and activities pursuant to Title IX and the federal Title IX regulations. Sex-based harassment is one form of sex discrimination that is prohibited under Title IX. The adoption of this rule, as a reflection of federal regulatory mandates, is not intended to suggest that discrimination on the basis of sex is any more or any less serious, or any more or any less of a concern to the District, than harassment that is based on any other legally-protected status (e.g., race, national origin, disability, religion, etc.).

#### Confidentiality Requirements and Considerations Related to Title IX Compliance

No District official, District employee, or other person acting as an agent of the District may disclose personally identifiable information obtained in the course of complying with the District's obligations under the federal Title IX regulations, except in the following circumstances:

1. When the District has obtained prior written consent from a person with the legal right to consent to the disclosure;
2. 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 personally identifiable information is at issue;
3. To carry out the purposes of the Title IX regulations,\* including action taken to address conduct that reasonably may constitute sex discrimination or retaliation prohibited under Title IX in the District's education program or activity;
4. As required by federal law, federal regulations,\* or the terms and conditions of a Federal award, including a grant award or other funding agreement; or
5. To the extent such disclosures are not otherwise in conflict with Title IX or this part, when required by State or local law or when permitted under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, or its implementing regulations, 34 C.F.R. part 99.

\*Note: The federal Title IX regulations expressly provide that the obligation to comply with Title IX and the Title IX regulations is not obviated or alleviated by the student education record confidentiality provisions of FERPA or the federal FERPA regulations. See 34 C.F.R. §106.6(e). That is, when a disclosure of student record information is **necessary** to comply with the Title IX regulations, and a conflict with FERPA **cannot** be avoided, the Title IX regulations serve as an exception to student record confidentiality.

No District official, District employee, or other agent of the District may disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity, or unless another exception to the confidentiality of personally identifiable information that is expressly allowed by the Title IX regulations applies.

In connection with the District's Title IX grievance procedures, the District and its designated employees and other agents are required to:

1. Take reasonable steps to protect the privacy of the parties and witnesses during the pendency of the District's Title IX grievance procedures, provided that the steps do not restrict the ability of the parties to (1) obtain and present evidence, including by speaking to witnesses (while still prohibiting retaliatory conduct); (2) consult with their family members, confidential resources, or advisors; or (3) otherwise prepare for or participate in the grievance procedures. See 34 C.F.R. § 106.45(b)(5).

2. Take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence that the party obtained solely through the District's grievance procedures. *See* 34 C.F.R. § 106.45(f)(4)(iii).
3. Exclude, avoid seeking, and avoid the use and other disclosure of certain protected (i.e., impermissible) types of evidence, subject only to very limited express exceptions, as further set forth in the Title IX regulations. *See* 34 C.F.R. § 106.45(b)(7) (addressing, for example, medical records and information that is subject to a legally-protected privilege, such as an attorney-client privilege).

**Responding to Reports or other Notice of Information that  
May Reasonably Constitute Sex Discrimination or Prohibited Retaliation  
under Title IX when a Title IX Complaint Is Not Pending**

Any time that a District Title IX Coordinator has been notified of conduct that may reasonably constitute sex discrimination or retaliation prohibited under Title IX, but when a "complaint" (as defined under the Title IX regulations) has **not** been made or has been withdrawn, the Title IX Coordinator (or a qualified designee whose responsibilities, in the absence of a conflict of interest or other extraordinary circumstances determined by the District Administrator, shall be overseen by the Title IX Coordinator) is responsible for the following:

1. Ensuring the equitable treatment of (1) any person alleged to have been subjected to conduct that may constitute a violation of Title IX, and (2) any person alleged to be responsible for such conduct.
2. Seeking clarity or confirmation, as needed, regarding the information being reported or the conduct that is being alleged so that the Title IX Coordinator will be able to fulfill the Coordinator's role and responsibilities.
3. Notifying the person(s) alleged to have been subjected to conduct that may constitute a violation of Title IX of the District's Title IX grievance procedures for resolving Title IX complaints, including any informal resolution process that may be available. If such person(s) are unknown and cannot reasonably be identified, then this notification shall be provided to the individual who reported the conduct.
4. Offering and coordinating supportive measures, as appropriate, to eligible person(s) alleged to have been subjected to the conduct that may constitute sex discrimination or retaliation in violation of Title IX, to the extent such persons can be identified.
  - a. Supportive measures shall be offered and coordinated in a manner that is consistent with subsection 106.44(g) and other applicable subsections of the Title IX regulations.
  - b. When no Title IX complaint has been made, the federal regulations allow (but do not require) the District to provide supportive measures to a person who is alleged to be responsible for conduct that may reasonably constitute prohibited sex discrimination or retaliation. (As discussed below, after a complaint has been made/initiated, the Title IX Coordinator is required to offer and coordinate, as appropriate, supportive measures for respondents.)
  - c. Additional procedures and requirements related to offering and coordinating supportive measures are established in a later section of this rule, below.
5. Ensuring, to the extent appropriate based on the information known to the Title IX Coordinator, that appropriate administrators become involved in considering the potential use of the emergency removal procedures and/or the employee administrative leave provisions that are found in or otherwise permitted by the Title IX regulations. *See* 34 C.F.R. §106.44(h) (regarding emergency removal) and §106.44(i)(regarding administrative leave).
  - a. Procedures and standards established under other laws or District policies may also need to be satisfied in connection with any such emergency removal or administrative leave decision.
  - b. With respect to individuals who are volunteers, non-employee agents, or other non-employees authorized by the District to provide an aid, benefit, or service, this may additionally include, for example, consideration of modifying or removing specific duties as a supportive measure that is instituted for non-punitive, non-disciplinary reasons.
  - c. All such decisions about emergency removal, administrative leave, etc. must adhere to the restriction found in the Title IX regulations that disciplinary sanctions for sex discrimination or prohibited retaliation under Title IX may be imposed on a respondent **only after the District has determined at the conclusion of the District's Title IX grievance procedures** that the respondent violated the District's prohibition on sex discrimination or retaliation.
6. In the absence of a complaint being made or upon the withdrawal by the complainant of any or all of the allegations in a complaint, and in the absence or termination of any informal resolution process, determining whether to self-initiate (i.e., as the Title IX Coordinator) a complaint of sex discrimination or retaliation for the purpose of pursuing the District's Title IX grievance procedures.

- a. The Title IX Coordinator's determination whether to initiate a complaint must be made using the standards and procedures set forth in subsection 106.44(f)(1)(v) of the Title IX regulations. **It is critical to review and apply the regulatory standards prior to initiating a complaint.**
  - b. Except in situations where the District's Title IX Coordinator is unavailable or affected by a conflict of interest or improper bias, the determination whether to initiate a complaint shall be made by the Title IX Coordinator and shall **not** be delegated to a designee. The District Administrator or district legal counsel shall authorize any such delegation.
  - c. **Prior to** actually initiating a Title IX complaint under the authority granted to the Title IX Coordinator under subsection 106.44(f)(1)(v), the Title IX Coordinator is required to (1) **notify** the person(s) alleged to have been subjected to conduct that may constitute a violation of Title IX of the intent to initiate the complaint, and (2) appropriately address reasonable concerns about any such person's safety or the safety of others, including by providing or modifying supportive measures.
  - d. Upon initiating a complaint, the Title IX Coordinator does **not** become a "complainant" or a party to the complaint. Any person who meets the definition of a "complainant" found in the Title IX regulations in relation to the allegations retains his/her status as a complainant.
7. Regardless of whether a complaint is initiated, taking appropriate, prompt, and effective steps (in addition to any remedies for sex discrimination that are provided to specific individuals) to ensure that any sex discrimination that is found to have occurred does not continue or recur within the District's education program or activities.
  8. Taking steps to ensure the proper documentation and appropriate retention of records that identify the actions that the District took to meet its obligations under section 106.44 of the Title IX regulations.

### **Responsibilities of the Title IX Coordinator Once a Title IX Complaint Has Been Made to the District (or Initiated by the Title IX Coordinator)**

A report of conduct that may reasonably constitute sex discrimination or retaliation prohibited under Title IX needs to be treated as a Title IX "**complaint**" when an eligible person (as identified in the federal Title IX regulations or in the District's Title IX grievance procedures) has made an oral or written request to the District that objectively can be understood as a request for the District to investigate and make a determination about the alleged discrimination or retaliation. As further described in the previous section of this rule, above, a District Title IX Coordinator may also initiate a complaint in some situations. (Note: Not every person who is eligible to submit a Title IX "complaint" that initiates the District's Title IX grievance procedures qualifies as a "complainant," as the term "complainant" is specially defined in the Title IX regulations and used in this rule.)

If a complaint is made or initiated, the Title IX Coordinator (or a qualified designee whose responsibilities, in the absence of a conflict of interest or other extraordinary circumstances determined by the District Administrator, shall be overseen by the Title IX Coordinator) is responsible for the following:

1. Ensuring the equitable treatment of each "complainant" and "respondent," as those terms are defined in the Title IX regulations.
2. Ensuring that the allegations presented as the complaint are sufficiently identified/documented, particularly when the complaint is presented orally, so that the Title IX Coordinator will be able to fulfill the Coordinator's role and responsibilities (e.g., to provide notice of the allegations, to facilitate a prompt investigation, to consider the possible dismissal of any allegations, etc.). As needed, the Title IX Coordinator shall, without bias or favoritism and without serving as an advocate, seek confirmation of what is being alleged or request additional details or clarifications. This provision does not preclude the possibility of later changes to the scope of the allegations covered by a complaint.
3. If a complainant or respondent is a student with a disability, consulting with one or more members, as appropriate, of the student's Individualized Education Program (IEP) team, if any, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision under Section 504 of the Rehabilitation Act, if any, to determine how to comply with the requirements of the Individuals with Disabilities Education Act and Section 504 throughout the implementation of the District's Title IX grievance procedures.
4. Offering and coordinating supportive measures, as appropriate, for each complainant **and** respondent, in a manner that is consistent with subsection 106.44(g) and with other applicable subsections of the Title IX regulations. Additional procedures and requirements related to offering and coordinating supportive measures are established in a later section of this rule, below.
5. Ensuring, to the extent appropriate based on the information known to the Title IX coordinator, that appropriate administrators become involved in considering the potential use of the emergency removal procedures and/or the employee

administrative leave provisions that are found in or otherwise permitted by the Title IX regulations. *See* 34 C.F.R. §106.44(h) (regarding emergency removal) and §106.44(i)(regarding administrative leave).

- a. Procedures and standards established under other laws or District policies may also need to be satisfied in connection with any such emergency removal or leave decision.
  - b. With respect to individuals who are volunteers, non-employee agents, or other non-employees authorized by the District to provide an aid, benefit, or service, this may additionally include, for example, consideration of modifying or removing specific duties as a supportive measure that is instituted for non-punitive, non-disciplinary reasons.
  - c. All such decisions about emergency removal, administrative leave, etc. must adhere to the restriction found in the Title IX regulations that disciplinary sanctions for sex discrimination or prohibited retaliation under Title IX may be imposed on a respondent **only after the District has determined at the conclusion of the District's Title IX grievance procedures** that the respondent violated the District's prohibition on sex discrimination.
6. Initiating and following the District's Title IX grievance procedures, subject to any decision to dismiss the complaint or utilize an informal resolution process.
    - a. As further covered in the District's procedures, upon the initiation of the District's Title IX grievance procedures, the Title IX Coordinator is required to provide **"notice of the allegations"** to each complainant **and** respondent whose identities are known. The notice of the allegations must include all of the information required by subsection 106.45(c) of the federal Title IX regulations. (Note: When a complaint of sex discrimination alleges that a District policy or practice discriminates on the basis of sex, it is possible that there will be no "respondent" as the term is defined in the Title IX regulations and used in this rule.)
    - b. If appropriate, available, and requested by all parties, an informal resolution process may be pursued as an alternative to completing such grievance procedures.
  7. If there is a determination that sex discrimination or retaliation prohibited under Title IX occurred, then, as appropriate to the specifics of the situation, the Title IX Coordinator is responsible for:
    - a. Coordinating the provision and implementation of remedies to a complainant and other persons the District identifies as having had equal access to the District's education program or activity limited or denied by sex discrimination.
    - b. Coordinating the imposition of any disciplinary sanctions on a respondent, including notifying the complainant of any such disciplinary sanctions.
    - c. Taking other appropriate, prompt, and effective steps (i.e., in addition to individually-targeted remedies and sanctions) to ensure that sex discrimination does not continue or recur within the District's education program or activity.
  8. Taking steps to ensure the proper documentation and appropriate retention of the following records:
    - a. For each complaint of sex discrimination or prohibited retaliation, records that are created through or that otherwise document the District's use of the grievance procedures or, if applicable, an informal resolutions process and the resulting outcome of the complaint.
    - b. Records that otherwise identify the actions that the District took to meet its obligations under section 106.44 of the federal Title IX regulations.

### **Offering, Providing, and Coordinating "Supportive Measures" under Title IX**

In this rule, the term "supportive measures" has the definition given in the federal Title IX regulations. *See* 34 C.F.R. § 106.2.

1. The District, through the Title IX Coordinator or a qualified designee, will offer and coordinate supportive measures for the parties to a Title IX matter when required by the Title IX regulations, in a manner that is consistent with subsection 106.44(g) and with other applicable subsections of the Title IX regulations.
2. As part of offering and coordinating supportive measures to a party (i.e., to a "complainant" or "respondent," as defined by the Title IX regulations), the Title IX Coordinator (or a designee) will:
  - a. Make prompt initial contact regarding supportive measures with (1) each party to whom appropriate supportive measures must be offered, and (2) each party whom the District determines will be directly affected by the implementation of supportive measures that are offered to another party.
    - In making such initial contact, the Title IX Coordinator (or a designee) will (1) identify the purpose and function of supportive measures; (2) inform **complainants** of the availability of supportive measures **to complainants** with

or without pursuing a complaint; (3) provide an opportunity for the party to communicate any initial requests or preferences with respect to supportive measures; and (4) identify the opportunities that the party has, consistent with the procedures defined below within this section, to request the modification or reversal of a District decision to provide, deny, modify, or terminate supportive measures that are applicable to the party.

- This initial contact shall normally occur by no later than a date that is closely proximate to the date that the Title IX Coordinator (or a designee), pursuant to subsections 106.44(f)(1)(iii) and/or 106.45(c)(1)(i) of the Title IX regulations, notifies the party of the District's Title IX grievance procedures. In some cases, earlier initial contact regarding supportive measures may be more appropriate.
- b. If a complainant or respondent is a student with a disability, consult with one or more members, as appropriate, of the student's Individualized Education Program (IEP) team, if any, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision under Section 504 of the Rehabilitation Act, if any, to determine how to comply with the requirements of the Individuals with Disabilities Education Act and Section 504 in the implementation of supportive measures.
  - c. Communicate relevant District decisions about supportive measures to the affected party in an ongoing manner, maintaining confidentiality to the extent required by subsection 106.44(g)(5) of the Title IX regulations. See also item 3. in this list, below.
  - d. Coordinate the implementation of supportive measures, including reasonably acting on any knowledge that suggests a need to review the effectiveness of and/or make modifications to supportive measures, as well as determining whether and when it may be appropriate to terminate specific supportive measures.
3. **Confidentiality.** No District official, District employee, or other agent of the District may disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity, or unless another exception to confidentiality that is expressly allowed by the Title IX regulations applies.
  4. **Requests by parties to modify or reverse decisions about supportive measures.** Under the federal Title IX regulations, the District must provide an opportunity for a complainant or respondent to request that an appropriately trained and impartial District employee review a District decision to provide, deny, modify, or terminate any supportive measures that are applicable to the requesting party, and, if appropriate, modify or reverse the District decision. The opportunity to make such a request applies not only to the District's initial determination and initial implementation of supportive measures, but also when specific circumstances that are relevant to a challenged decision have materially changed.
    - a. The District establishes the following procedures for submitting and responding to such requests:
      - i. The affected party (or a parent, guardian, or other authorized legal representative) shall submit such a request to a District-designated Title IX Coordinator. The request shall identify the specific change(s) that the party seeks, and the reason that the party is seeking the changes.
      - ii. The request shall be submitted in writing, unless the Title IX Coordinator expressly waives the requirement (e.g., if the Title IX Coordinator agrees to personally document the request during an in-person meeting related to such a request).
      - iii. Upon receipt of the request, the Title IX Coordinator or the District Administrator acting on behalf of the Title IX Coordinator, shall promptly refer the request and any relevant records to an impartial employee who has received appropriate training covering the District's Title IX obligations and, specifically, decisions and procedures related to supportive measures. The employee assigned to make a determination with respect to the request must be someone other than the employee who made the challenged decision. A Title IX Coordinator can serve as the impartial employee if the Coordinator did not make the challenged decision.
      - iv. Upon a review of the request, the relevant records, and other any relevant information that the employee obtains related to the request, the impartial employee shall make a determination with respect to the request and notify the requesting party and (unless the impartial employee is a Title IX Coordinator) the Title IX Coordinator, in writing, of the decision.
      - v. Such decisions shall be made in a prompt manner that, under the fact-specific circumstances presented by the request, reflects the District's obligation to provide equitable treatment to all parties. If the impartial employee determines that the decision will not be made and communicated within 10 business days after the date the party submitted the request/challenge, the employee shall notify the requesting party and, if applicable, the Title IX Coordinator of the expected timing of the decision and the reason for the timing.

- b. The impartial employee assigned to conduct the review of a request to modify or reverse a District decision with respect to supportive measures shall apply the following standards:
  - i. The employee assigned to review the request is authorized to **unilaterally** modify or reverse the challenged decision upon a determination that the challenged decision was **inconsistent** with the definition of supportive measures found in section 106.2 of the federal Title IX regulations.
  - ii. If the employee concludes that the challenged decision was **consistent** with the Title IX regulations, but that a modification or reversal of the decision may be a more reasonable and comparably effective approach, the employee may **not** unilaterally modify or reverse the challenged decision. However, the employee may present the alternative approach as a recommendation for consideration to the District employee who is responsible for District decisions about the supportive measures that are applicable to the party.

## **Grievance Procedures for Addressing Complaints of Sex Discrimination or Retaliation as Prohibited under Title IX**

### **Introduction**

The Pittsville School District has adopted these grievance procedures that provide for the prompt and equitable resolution of complaints made by (1) students, employees, or certain other individuals who are participating or attempting to participate in the District's education program or activities, (2) by a parent, guardian, or certain other legal representatives of person eligible to make a complaint, or (3) by the Title IX Coordinator, alleging any conduct that, if proven, could reasonably constitute sex discrimination (including sex-based harassment) or retaliation prohibited under Title IX or the Title IX regulations. Collectively, such complaints may be referred to as "Title IX complaints."

Except to the extent that a Title IX complaint is dismissed (in whole or in part), withdrawn, or resolved through an informal resolution process, the District is obligated to investigate a Title IX complaint and reach a determination regarding the allegations of sex discrimination or retaliation using these grievance procedures.

When more than one complainant or more than one respondent is involved in a Title IX complaint, references to a "party," "complainant," or "respondent" include the plural, unless the context clearly requires otherwise. Also, U.S. Department of Education guidance accompanying the Title IX regulations states that prohibited retaliation is considered to be a type of prohibited discrimination under Title IX. Therefore, a reference to prohibited discrimination can normally be understood to include prohibited retaliation, even if retaliation is not expressly mentioned.

### **Assignment of Roles and Responsibilities Necessary for the Implementation of the Grievance Procedures**

Upon initiating the District's grievance procedures in response to a Title IX complaint, the Title IX Coordinator shall ensure that the District designates individuals to perform the roles needed to implement the grievance procedures on a timely basis.

1. All such individuals, whether or not District employees, must be appropriately trained to perform their role.
2. For any complaint for which the authority to make role assignments may be unclear, a Title IX Coordinator shall consult with the District Administrator or the District Administrator's administrative-level designee to determine who will make final decisions about role assignments for that complaint.
3. The District will assign roles, as needed. The assigned roles will be performed by different persons at least to the extent mandated by the federal Title IX regulations.
4. In assigning roles for a complaint, the District will determine whether one person (who may or may not also be the Title IX Coordinator) will serve as both the complaint investigator and the decisionmaker for the same complaint, or whether those roles will be performed by different people.
  - a. The choice between the approaches shall be made in an unbiased manner and for reasons that are not improperly prejudicial to any party.
  - b. The administrator determining the appropriate approach for a given complaint shall consider factors such as the nature and complexity of allegations, the specific skills and experience of the individuals being considered for the roles, the current workload limitations of the individuals being considered for the role, whether one approach or the other may mitigate perceptions of bias or perceived conflicts of interest in a given case, and the possible value to the District of having a non-employee agent with particular expertise serve as an investigator and/or decisionmaker in the specific case.
  - c. By default, the District intends to normally use a model under which the investigator also serves as the decisionmaker who determines whether sex discrimination or other violations occurred. If the District deviates from the default, the

Title IX Coordinator shall ensure that the administrator who makes that decision documents in the record of the complaint the reasons that the roles were separated for that complaint.

5. The District may reassign the roles or assign multiple qualified individuals to perform specific roles if deemed appropriate in a particular case.

**General Standards and Requirements Applicable to the District and the District Agents Involved in Implementing the Title IX Grievance Procedures**

The District, the District's Title IX Coordinator(s), and, as applicable to their role(s), any District employee or other person authorized to act as agents of the District—including especially any employee or agent who is responsible for implementing the District's Title IX grievance procedures, authorized to modify or terminate supportive measure, or facilitating an informal resolution process—are required to:

1. Treat complainants and respondents equitably.
2. Not have any conflict of interest or bias that would impermissibly inhibit the person's objectivity, impartiality, or independent and good-faith judgment.
  - a. This includes neither having nor exhibiting any bias in favor of or against (1) complainants or respondents generally or (2) any individual complainant or respondent in a specific matter.
  - b. Upon being informed of a complaint, any District employee or other person who may act as an agent of the District in connection with the implementation of the District's grievance procedures shall self-report (1) any known pre-existing personal relationships (familial, social, etc.) to any party or known witness and (2) any other known circumstances that relate to the complaint that may reasonably cause the District to disqualify the person from performing a particular role as an agent of the District due to concerns with a conflict of interest or bias. Such a report may be made to a Title IX Coordinator or to the District Administrator. Previous interactions with a complainant, respondent, or witness in a professional capacity, standing alone and in the absence of other specific circumstances, would normally be insufficient to raise a material concern about a conflict of interest or bias.
3. Avoid prejudgment of the facts at issue.
4. Apply a presumption, throughout the course of performing their designated role(s), that the respondent is not responsible for the alleged discriminatory conduct until a determination regarding responsibility is made at the conclusion of the grievance procedures.
5. Adhere to the restrictions found in the Title IX regulations that:
  - a. Any disciplinary sanctions for engaging in sex discrimination or prohibited retaliation under Title IX may be imposed on a respondent only after the District has determined, at the conclusion of the District's Title IX grievance procedures, that the respondent violated the District's prohibition on sex discrimination or retaliation.
  - b. No person acting on behalf of the District may discipline a party, witness, or others participating in a District's grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the District's determination whether sex discrimination occurred.
6. Engage in an objective evaluation of all relevant, permissible evidence—including both inculpatory and exculpatory evidence.
7. Exclude, avoid seeking, and avoid the use and any further disclosure of certain protected (i.e., impermissible) types of evidence, subject only to very limited express exceptions, as further set forth in the Title IX regulations. *See* 34 C.F.R. § 106.45(b)(7). The following types of evidence are **impermissible**, unless an expressly stated exception applies:
  - a. Evidence that is protected under a privilege recognized by Federal or State law (e.g., attorney-client privilege), unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.
  - b. 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. If a party or witness is under 18 years old, then the District must obtain the voluntary, written consent of a parent or guardian.
  - c. 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 determination that sex-based harassment occurred.

8. Use "preponderance of the evidence" as the standard of proof when making findings of fact and when determining whether sex discrimination or other alleged violations or misconduct encompassed by the allegations has occurred.
9. Take reasonable steps to protect the privacy of the parties and witnesses during the pendency of the District's Title IX grievance procedures. These steps will not restrict the ability of the parties to (1) obtain and present evidence, including by contacting witnesses (while still prohibiting the party from engaging in retaliation, such as intimidation or coercion of a witness); (2) consult with their family members, confidential resources, or advisors; or (3) otherwise prepare for or participate in the grievance procedures.
  - a. These steps may include, for example, directing the parties, and any advisor(s) to a party, to refrain from further disseminating certain evidence, records, or information connected to proceedings under these grievance procedures. (Note: In some situations, a state or federal law may independently prohibit the further dissemination of particular evidence/records, particularly by parties who are District employees.)
  - b. As a related obligation, the District and District agents involved in implementing these grievance procedures are required to take reasonable steps to **prevent and address** the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. See 34 C.F.R. § 106.45(f)(4)(iii).
10. Comply with the restrictions on the disclosure of personally identifiable information that is obtained in the course of complying with the federal Title IX regulations and the District's grievance procedures, as such restrictions and limited exceptions are set forth subsection 106.44(j) of the Title IX regulations.
11. Recognize that nothing in Title IX or in the federal Title IX regulations may be read in derogation of any legal right of a parent, guardian, or other authorized legal representative to act on behalf of a complainant, respondent, or other person, including but not limited to making a complaint through the District's grievance procedures for complaints of sex discrimination.

### **Individuals Who May Make a Title IX Complaint that is Subject to these Grievance Procedures**

An eligible person can submit a Title IX complaint using any of the methods identified in Board Policy 113, including submitting the complaint to a District-designated Title IX Coordinator using the contact information that is posted in the District's public Title IX Notice (available at [www.pittsville.k12.wi.us](http://www.pittsville.k12.wi.us)) and any of the following methods:

1. By in-person delivery at the District (whether the report is made verbally or delivered in writing);
2. By U.S. mail to the Coordinator's District office location;
3. By telephone, using the Coordinator's District-issued telephone number; or
4. By electronic mail, using the Coordinator's District issued email address.

The following people have a right to make a complaint of alleged sex discrimination or prohibited retaliation, **including complaints of sex-based harassment**, requesting that the District investigate and make a determination about the allegations under Title IX:

1. A "complainant," which includes:
  - a. Any District student or District employee who is alleged to have been subjected to conduct that could constitute sex discrimination or prohibited retaliation under Title IX; or
  - b. Any other person (i.e., other than a District student or District employee) who is alleged to have been subjected to conduct that could constitute sex discrimination or prohibited retaliation under Title IX at a time when that individual was participating or attempting to participate in the District's education program or activity.
2. A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant.
3. Any District-designated Title IX Coordinator, to the extent consistent with the procedures and standards defined in subsection 106.44(f)(1)(v) of the Title IX regulations

With respect to **complaints of sex discrimination** (including prohibited retaliation) under Title IX **other than sex-based harassment**, in addition to the people listed above, the following persons also have a right to make a complaint:

1. Any District student or District employee.
2. A person other than a District student or District employee, provided that the person was participating or attempting to participate in the District's education program or activity at the time of the alleged sex discrimination.



Under the above provisions, a person is entitled to make a **complaint of sex-based harassment** that is prohibited under Title IX only if they themselves are alleged to have been subjected to the harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of subsection 106.44(f)(1)(v) of the Title IX regulations.

### **The Main Steps of Processing a Title IX Complaint**

Subject to the later provisions, below, regarding (1) voluntary informal resolution processes, and (2) the dismissal of complaints or any individual allegations within a complaint, the following are the main steps involved in processing a Title IX complaint under these grievance procedures.

#### ***I. Notice of the allegations, the grievance procedures, and certain rights***

Upon initiation of the District's Title IX grievance procedures following the receipt of a Title IX complaint, a Title IX Coordinator or designee will notify the known parties (including the parent or guardian of a party who is a minor) of the following:

1. The District's Title IX grievance procedures and any informal resolution process that may be available.
2. Sufficient information about the complaint and allegations to allow the parties to respond to the allegations, including at least all of the following to the extent that the information is available to the District at the time:
  - a. The identities of the parties involved in the incident(s).
  - b. The conduct alleged to constitute sex discrimination (or, if applicable, prohibited retaliation) under Title IX.
  - c. The date(s) and location(s) of the alleged incident(s).
3. The District's prohibition on retaliation.
4. The parties' right, prior to the end of the investigation phase of the procedures, to an equal opportunity to access the relevant and not otherwise impermissible evidence, or to receive an accurate description of that evidence. In addition, to the extent the District provides or offers to provide a description of the relevant and permissible evidence, a party may request, and the District shall then provide, an equal opportunity to access the evidence. (Note: As addressed below, the opportunity to access the evidence must include a reasonable opportunity for the parties to provide a response to the evidence.)

The following may also apply in some cases:

1. If, in the course of an investigation, the District decides to investigate additional allegations of sex discrimination (or retaliation) by the respondent toward the complainant that were not part of the original notice of the allegations or that are added due to the consolidation of related complaints, the District must notify the appropriate parties of the additional allegations.
2. If the District specifically intends to use an investigative interview or other meeting or proceeding under the Title IX grievance procedures to investigate additional alleged conduct that is not fairly encompassed by the alleged conduct of the which party already has notice, and if that additional alleged conduct could subject the party to disciplinary consequences or other punitive adverse action, the Title IX Coordinator, investigator, or a designee shall appropriately notify the affected party that the interview, meeting, or other proceeding will address such additional, potentially-disciplinary matters as part of a concurrent investigation.

To the extent consistent with the general principle of treating the parties equitably, the need for a prompt and effective response to a complaint, and the need to avoid interfering with a party's reasonable opportunity to prepare to respond to the allegations, the following apply to providing notice of the allegations and related information, as mandated by the Title IX regulations:

1. Beyond the requirement that the initial notice of the allegations must be provided upon the initiation of the District's Title IX grievance procedures, there is not a specific or always-applicable deadline for providing the notice.
  - a. After receiving a Title IX complaint, the Title IX Coordinator or a designee responsible for providing the notice has some discretion to reasonably and promptly attempt to address some preliminary matters before moving forward with the notice of the allegations. Such preliminary matters may relate, for example, to (1) initial safety concerns; (2) initial issues regarding supportive measures; (3) obtaining relevant information concerning a student with a disability; (4) evaluation of grounds for potential dismissal of any allegations in the complaint; or (5) clarifying or confirming the identity of the parties or other particulars about the allegations.
  - b. In no case will the District conduct an investigative interview or investigative meeting with a party under these grievance procedures without first providing notice of the allegations.

2. The notice of the allegations does not necessarily have to be provided to each party simultaneously.
3. The District will typically provide notice of the allegations (and the related information that is required to be included with the notice) in writing, but written notice is not strictly required. If notice is given orally (e.g., in connection with a complaint over a District policy for which there is no respondent), the individual responsible for providing the notice shall document that the notice was given orally.”]

## II. Investigation of the allegations

The District will designate an investigator for each Title IX complaint that is processed under the Title IX grievance procedures. The investigator is charged with conducting an adequate, reliable, and impartial investigation of the relevant allegations. An investigator may be assisted in the investigation by one or more other persons. However, the investigator retains ultimate responsibility for the investigation, and if any such assistant provides other than clerical and ministerial support, then the assistant must have completed all of the training required for an investigator.

In the investigation process, the District has the burden to conduct an investigation that gathers sufficient evidence, both inculpatory and exculpatory, to make a determination with respect to the allegations. Most typically, this means sufficient evidence to determine whether sex discrimination or retaliation prohibited by Title IX occurred or did not occur. The parties themselves do **not** have the burden to affirmatively put forth the evidence that would be necessary to either prove or defeat the allegations.

When conducting the investigation, an investigator will:

1. Adhere to the “General standards and Requirements Applicable to the District and the District Agents” for the District’s grievance procedures, as listed and described above.
2. Reasonably attempt to conduct one or more investigative interviews of the complainant(s), the respondent(s), and such witnesses as the investigator determines may provide relevant evidence that is able to be considered and that is not unduly duplicative.
3. Provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence. Witness testimony/statements and other evidence must be relevant and not otherwise impermissible.
  - a. Neither a party nor, if applicable, any party’s representative or advisor will be permitted to conduct direct, in-person questioning of another party or of any third-party witness at any investigative interview or meeting called by the District as part of the grievance procedures.
  - b. A party may, if they desire, request that the investigator interview specific persons and/or propose questions to be asked of specific persons. The investigator shall determine whether to attempt to conduct such interviews and ask such questions in light of the District’s burden to gather sufficient relevant evidence, the obligation to conduct an adequate and reliable investigation, and the obligation to provide parties an equal opportunity to present witnesses and evidence.
  - c. If the investigator declines to interview a witness identified by a party or is unable to interview a party or a witness (e.g., because the party or witness refuses to participate or is not reasonably available), then the investigator shall document the reason the witness was not interviewed.
  - d. If the investigator declines to accept evidence proffered by a party (e.g., due to lack of relevance), then the investigator shall document the reason for that evidentiary ruling.
  - e. Investigations under the grievance procedures are not subject to the rules of evidence that apply in court proceedings. Accepting evidence into the record does not, by itself, constitute a decision that the evidence is relevant, reliable, or persuasive.
4. If a person whose participation in an investigative interview or other meeting held as part of the investigation is either invited or expected, and the person objects to the proposed date, time, or location of the interview or meeting, give due consideration to the person’s reason for the objection. The investigator shall treat requests to reschedule under the standards of reasonableness, good cause, and avoiding undue delay that would jeopardize a prompt investigation, as set forth in the later section (below) regarding timelines and extensions of timelines.
5. Allow the parent or guardian of a party who is a minor or who is otherwise subject to legal guardianship to accompany the party during any investigative interview or other meeting held as part of the investigation to exercise rights on behalf of the party. To the extent that an investigator permits any personal advisor to be present during any investigative interview or other meeting held as part of the investigation, the investigator shall treat all parties equally. The investigator may place reasonable and lawful conditions on any such additional person’s (i.e., parent, guardian, or advisor) presence during the

proceedings, including conditions that limit their active participation and conditions intended to appropriately protect confidentiality and privacy, consistent with requirements established in the Title IX regulations.

6. Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence, even if relevant, is nonetheless impermissible for use or consideration. The term “relevant” is defined by the Title IX regulations, and impermissible evidence (and limited exceptions) is as described in 34 C.F.R. § 106.45(b)(7).
7. If the investigator is also serving as the decisionmaker for the complaint, ensure that the investigation included sufficient opportunities, or attempts to provide opportunities, for the investigator to question parties and witnesses to assess credibility to the extent that credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination or retaliation.
8. Prior to the end of the investigation phase of the grievance procedures, provide an equal opportunity for the parties to access either (1) the relevant and not otherwise impermissible evidence gathered through the investigation, or (2) an accurate description of such evidence.
  - a. If the investigator provides access or offers to provide access to a description of the evidence, then the investigator must further provide the parties with an equal opportunity to have direct access to the evidence **upon the request of a party**.
  - b. The opportunity to access the evidence or a description of the evidence shall include a reasonable opportunity for the parties to provide a response to the evidence. Any response provided by a party shall become part of the record of the proceedings and shall be considered by the investigator prior to ending the investigation phase (e.g., to determine if any further investigation would be appropriate).
    - i. The investigator shall normally allow at least ten (10) calendar days, starting from the date the investigator informs the parties that the evidence or description of the evidence is accessible for review, for the parties to provide a response to the evidence.
  - c. A party may decline to exercise these opportunities to access and provide a response to the evidence.
9. Any supplemental processes or procedures instituted by an investigator must not conflict with the District’s written Title IX grievance procedures and must be applied to all parties equally. (i.e: If the investigator provides any additional opportunities to submit additional evidence or to further respond to evidence prior to the determination, such additional discretionary opportunities must be offered equally to all parties.

After the investigator completes the process of gathering evidence and closes the investigation:

1. If the investigator is also serving as the decisionmaker regarding the allegations, the investigator will proceed to make the findings and conclusions, including making any applicable credibility determinations, that are necessary to make a determination of the allegations.
2. If the investigator is **not** serving as the decisionmaker for the complaint:
  - a. The investigator shall complete a written investigative report to fairly summarize the relevant and permissible evidence—both inculpatory and exculpatory. To assist the decisionmaker, the investigator’s written report may also:
    - i. Highlight what the investigator considers to be disputed or undisputed facts.
    - ii. Convey evidence, observations, or impressions that address (1) the credibility of parties or witnesses and/or (2) the reliability or persuasiveness of other evidence. However, any such assessments are in no way binding on the decisionmaker(s). Decisionmakers have an obligation to apply their independent judgment to all such decisions/issues.
    - iii. Include recommended findings of fact and/or recommended conclusions. Even if an investigator chooses to convey recommended findings or recommended conclusions (which is neither required nor, the designated decisionmaker(s) retain an obligation to objectively evaluate the relevant evidence, apply their independent judgment, and reach a determination. A decisionmaker shall not simply defer to any recommendations made by the investigator.
  - b. The investigator shall **not** advocate for the imposition or non-imposition of specific remedies or sanctions.
  - c. The investigator shall provide the complete evidentiary record and the other records from the investigation phase of the grievance procedures to the decisionmaker (or to the Title IX Coordinator on behalf of the decisionmaker).

3. At the discretion of the investigator, a written investigative report may be clarified, corrected, or amended prior to the conclusion of the grievance procedures provided that the investigator documents the reason for the change(s) and provides immediate notice of any such changes to the decisionmaker.

### **III. Pre-determination procedures that apply if the investigator does not also serve as the decisionmaker**

At the District's discretion, the designated investigator for a complaint may serve as the designated decisionmaker for the same complaint. However, the following procedures apply if the investigator does not also serve as the decisionmaker:

1. To the extent the credibility of any party or witness is both in dispute and relevant to evaluating one or more allegations of sex discrimination or retaliation, the decisionmaker **shall** arrange an opportunity for the relevant individuals to appear for questioning by the decisionmaker, the responses to which shall supplement the evidentiary record.
  - a. At the discretion of decisionmaker, but giving the same opportunities to all parties, any such appearance may be in person, by telephone, or via an online meeting. *[Insert if desired: "However, reasonable efforts to arrange for an in-person appearance should normally be attempted before considering the other options."]*
  - b. The decisionmaker may additionally request a party or witness to respond to one or more written questions, but written questions may not be entirely substituted for reasonable attempts to arrange an in-person, telephonic, or online appearance.
  - c. If such questioning to assess credibility results in the submission of new evidence that, in the judgment of the decisionmaker, is highly material to the allegations and beyond what the parties had a reasonable opportunity to address during the investigation phase, then the decisionmaker shall provide an opportunity for each party to respond to the new evidence.
2. Any supplemental processes or procedures instituted by the decisionmaker, such as providing an opportunity for a party to provide new evidence or to further respond to evidence must not conflict with the District's Title IX grievance procedures and must be offered to all parties equally. However, neither a decisionmaker nor any person acting as the decisionmaker's designee may hold a live, adversarial hearing involving the parties under these grievance procedures.
3. The decisionmaker may consult with the investigator regarding the evidentiary record and/or ask the investigator to clarify statements included in an investigative report. If appropriate and with immediate notice to the decisionmaker, the investigator may amend the investigative report for purposes of clarity, accuracy, or completeness, with documentation of the reason for the change(s).

### **IV. Determination of the allegations**

A decisionmaker designated by the District will make a determination regarding the allegations that have been subject to an investigation under these grievance procedures, based on an evaluation of the relevant and permissible evidence and using the preponderance of the evidence standard of proof.

The designated decisionmaker shall notify the parties, in writing, of the following:

1. The determination whether sex discrimination or prohibited retaliation occurred under Title IX.
2. The rationale for any such determination(s).
3. If applicable, the permissible bases for the complainant and respondent to appeal the determination(s) made under Title IX.

If applicable, the decisionmaker shall also notify the appropriate parties, in writing, of the following:

1. Any conclusion regarding whether any of the conduct encompassed by the allegations brought under Title IX and that is found to have occurred violated other laws or District policies or otherwise constituted misconduct within the scope of the District's disciplinary jurisdiction. In the event a decisionmaker defers making or neglects to make any such additional conclusions, the District may still make such additional conclusions after the conclusion of the Title IX grievance procedures using the evidence gathered during the investigation phase of the Title IX grievance procedures.
2. The determination regarding any alleged conduct that, although not a component of any of the Title IX allegations, was investigated using the grievance procedures and assigned to the same decisionmaker, except that any such determination may be shared with a party only if the determination is relevant to that party and if applicable law permits the disclosure of the determination to that party.

3. To the extent expressly required by any applicable law (such as under Chapter PI 9 with respect to a determination of allegations of pupil discrimination prohibited under state law), notice of any right of a party to appeal any determinations made under item 1. or 2. in this list.

The decisionmaker shall provide a copy of the written determination to the Title IX Coordinator and to the District Administrator. If no timely appeal requesting reconsideration of the determination is filed, the determination serves as the final District decision as of the last day for submitting such an appeal.

#### **V. Appeals of the determination of allegations of sex discrimination or retaliation under Title IX**

If any party to the complaint is dissatisfied with the decisionmaker's determination, the party may, within ten (10) calendar days of the date of delivery of the determination decision, file a written request for reconsideration with the office of the District Administrator. (The request may be submitted via electronic mail to the District Administrator's District-issued email address.) At the District's discretion (e.g., if the appeal is based on new evidence that was not reasonably available), limited additional fact-finding may occur.

If a party requests reconsideration, the party shall identify the basis for the request with reasonable specificity. Examples of possible grounds for an appeal, if supported by appropriate specificity, include a contention that the determination of the complaint does not reflect a reasonable view of the evidence, a contention that the determination is based on an error of law, a contention that the determination was materially affected by a conflict of interest or bias on the part of an agent of the school district, the existence of new and material evidence that was not reasonably available at the time of the initial determination, or a procedural irregularity that materially affected the outcome.

Prior to reaching a decision that would modify the challenged determination, the District will give the other parties to the matter at least five (5) calendar days to submit a statement regarding the asserted grounds for modification.

Giving due consideration to the overall time frames established for completing the grievance procedures, the District Administrator will normally issue a written decision on reconsideration to the parties within twenty (20) calendar days of the District Administrator's receipt of the request, unless the District Administrator determines that there is good cause for an extension of that timeline. The District shall notify the parties of any extension of the timeline.

If the District Administrator is a party to the complaint or otherwise affected by a conflict of interest or improper bias, the District would need to designate an alternate person or body to make the decision on reconsideration.

A decision on reconsideration is the final District determination of the complaint. If the Title IX complaint encompassed allegations that, if proven, would separately constitute a violation of the state pupil nondiscrimination provisions set forth in section 118.13 of the state statutes and Chapter PI 9 of the Wisconsin Administrative Code, the decision on reconsideration will include appropriate information about a complainant's right under Chapter PI 9 to appeal an adverse determination made under state law to DPI.”]

#### **VI. Provision of remedies and sanctions after a determination becomes final**

If there is a determination that sex discrimination or retaliation prohibited by Title IX occurred, the Title IX Coordinator (or a qualified designee) shall:

1. As needed to address any uncertainty, contact the District Administrator to determine who will authorize specific remedies and sanctions that are responsive to the determination of sex discrimination or retaliation.
2. Ensure that District decisions regarding remedies and sanctions are appropriately documented for the record of the complaint.
3. Coordinate the provision and implementation of remedies to a complainant and other persons the District identifies as having had equal access to the District's education program or activity limited or denied by sex discrimination or prohibited retaliation.
4. Coordinate the imposition of any disciplinary sanctions on a respondent, **including providing notification to the complainant of any such disciplinary sanctions.**
  - a. In some cases, the sanctions may involve the initiation of disciplinary proceedings that are subject to separate and additional procedural requirements (such as for the expulsion of a student or for the termination from employment for an employee, if applicable).
5. 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.

If District has concluded that misconduct other than a violation of Title IX occurred, remedies and any disciplinary consequences for such other misconduct (or recommendations to initiate specific disciplinary proceedings) shall be determined by an appropriate administrator or supervisor. These grievance procedures are not intended to otherwise address any remedies or disciplinary consequences for such other misconduct.

### **Other Elements, Requirements, and Limitations of the Grievance Process**

#### **I. Dismissals of complaints**

Following the receipt of a Title IX complaint made through the District's Title IX grievance procedures that alleges or purports to allege unlawful sex discrimination or retaliation that is prohibited under Title IX, including at points following the initiation of the District's Title IX grievance procedures, the District has authority to determine whether, consistent with the federal Title IX regulations, to dismiss a complaint in whole or in part for purposes of Title IX and the District's Title IX grievance procedures. The District expects its Title IX Coordinator(s) and its designated complaint investigators and decisionmakers to promptly raise the issue of dismissal as needed.

1. **Mandatory dismissal for purposes of Title IX.** For purposes of Title IX and the District's Title IX grievance procedures, the District will dismiss a complaint that was initially identified as a complaint of sex discrimination or retaliation under Title IX if the District concludes that either the following applies:

- a. The complaint does not present any allegation that, even if proved, would constitute sex discrimination or prohibited retaliation under Title IX. This includes dismissal due to none of the allegations, even if proved, having a sufficient connection to the District's education program or activity.
- b. The complainant voluntarily withdraws any or all of allegations in the complaint; the District's Title IX Coordinator declines to initiate a Title IX complaint on any of the withdrawn allegations; and, as to any remaining conduct that has been alleged, the District concludes that the remainder of the complaint does not present any allegation that, even if proved, would constitute sex discrimination or prohibited retaliation under Title IX.

Except in the case of the complainant's voluntarily withdrawal of **all** allegations, prior to dismissing a complaint on the basis that no allegations (or remaining allegations) would constitute sex discrimination or prohibited retaliation, the Title IX Coordinator or a designee must make a reasonable effort to clarify the allegations (or remaining allegations) with the complainant.

2. **Discretionary dismissal of the complaint or specific allegations.** The District may dismiss a complaint or dismiss specific allegations within a complaint, for purposes of Title IX and the District's Title IX grievance procedures, if the District concludes that any of the following apply:

- a. The relevant respondent is not participating in the District's education program or activity and is not employed by the District.
- b. The District is unable to identify the relevant respondent (if any) after taking reasonable steps to do so.
- c. The complainant voluntarily withdraws one or more, but not all, of the allegations presented in the complaint, and the District's Title IX Coordinator declines to initiate a Title IX complaint on the withdrawn allegations. In this instance, the withdrawn allegations will be dismissed, but the remaining allegations will proceed, subject to the rules set forth above regarding mandatory dismissals.
- d. The District determines that specific allegations made in the complaint, even if proven, would not constitute sex discrimination or prohibited retaliation under Title IX **and** elects to dismiss those specific allegations from the complaint even though other allegations are **not** being dismissed. Prior to dismissing any allegation on this basis, the Title IX Coordinator or a designee must make a reasonable effort to clarify the allegations with the complainant.

#### **3. Dismissal procedures.**

- a. At least one of the following administrators, acting in consultation as needed with District legal counsel, must authorize the dismissal of a complaint made through the District's Title IX grievance procedures or any individual allegations included in such a complaint: the District Administrator, the Title IX Coordinator, or an administrative-level designee acting on behalf of the Title IX Coordinator
- b. The administrator authorizing the dismissal shall ensure that District Administrator and Title IX Coordinator are notified of a decision to dismiss a complaint, in whole or in part.

- c. The administrator authorizing the dismissal, the Title IX Coordinator, or their designee must:
  - i. Promptly notify the complainant of the basis for the dismissal and that the dismissal may be appealed on any of the bases set forth in subsection 106.46(i)(1) of the federal Title IX regulations (i.e., certain procedural irregularities, new evidence, or conflicts of interest/bias).
  - ii. If the dismissal occurs after the respondent has been notified of the allegations, promptly notify the respondent of the dismissal and the basis for the dismissal, as well as that dismissal may be appealed on any of the bases set forth in subsection 106.46(i)(1). When required, notice to the respondent shall be provided promptly after notification is given to the complainant, or, any time the notification is provided in writing, it shall be provided simultaneously to both parties.
- 4. **Appeal of a dismissal.** A dismissal of the complaint or the dismissal of a specific allegation is an appealable decision to the extent required by the federal Title IX regulations. *See* 34 C.F.R. §§106.45(d)(3) and 106.46(i)(1).
  - a. A party receiving notice of a dismissal decision that wishes to appeal the dismissal of a complaint or the dismissal of specific allegations shall notify the Title IX Coordinator of the appeal in writing, including providing a statement of the specific grounds for the appeal, within five (5) business days of the date that the District provides the notice of dismissal.
  - b. The permissible grounds for an appeal of the dismissal decision are limited and are set forth in subsection 106.46(i)(1) of the federal Title IX regulations.
  - c. If a dismissal decision is appealed, the Title IX Coordinator or a designee shall coordinate the processing of the appeal according to all of the appeal procedures and requirements set forth in subsection 106.45(d)(3) of the federal Title IX regulations.
- 5. **Ongoing obligations to offer supportive measures and take steps to ensure that any sex discrimination does not continue.** If a complaint that has been dismissed, in whole or in part, leaves the District with notice of conduct that, although **not** being pursued as a complaint, may reasonably constitute sex discrimination or retaliation prohibited under Title IX, then the District and the Title IX Coordinator have ongoing obligations to:
  - a. Offer and coordinate supportive measures as required under subsections 106.44(f)(1)(ii) and 106.45(g).
  - b. 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, as required under § 106.44(f)(1)(vii).
- 6. **Status of dismissed allegations.** If a complaint or any specific allegation within a complaint is dismissed for purposes of Title IX, the District retains discretion, to the extent permitted or required by law, to take action with respect to the dismissed allegations or related conduct under other District policies and procedures. However, there may be limits on the District's authority to pursue disciplinary consequences or sanctions with respect to any dismissed allegation that could have constituted sex discrimination or retaliation under Title IX. The administration may need to seek legal advice in such scenarios.

## II. Voluntary informal resolution of Title IX complaints

To the extent permitted by the Title IX regulations and not prohibited by any other law, the District may elect to offer and facilitate a strictly voluntary informal resolution process that attempts to resolve the allegations of a complaint of sex discrimination or prohibited retaliation under Title IX, in whole or in part, without a full investigation and determination under the District's Title IX grievance procedures. **By law, an informal resolution process may not be used in connection with allegations that a District employee engaged in sex-based harassment of a student.**

As examples of informal processes that may be appropriate in some circumstances, the District's agents may (1) offer to mediate a resolution between the parties identified in a complaint; or (2) explore the parties' willingness to voluntarily proceed without a full investigation and/or adjudication when the facts may be undisputed or where there may be an opportunity to reach stipulated facts.

The following apply to the use of an informal resolution process:

- 1. **Notice of informal resolution process.** Before the initiation of an informal resolution process, the District must provide to the parties with notice of all of the information required under subsection 106.44(k)(3) of the federal Title IX regulations.
- 2. **Voluntary consent to participate.** The District must obtain the parties' voluntary consent to participate in the informal resolution process for the specific complaint. A party may withdraw their consent at any time prior to approving a resolution agreement and pursue (or resume) the District's grievance procedures.

3. **Facilitator requirements.** The district must designate a trained facilitator for the informal resolution process. The facilitator may not be the same person as either the investigator or decisionmaker for the complaint.
4. **Timelines.** If an attempt to reach a voluntary informal resolution has not reached a conclusion within twenty-one (21) calendar days of the date that the District received the consent of the parties, the District and the parties may mutually and voluntarily agree to extend the timeframe for attempting an informal resolution. In the absence of a mutual agreement to extend the timeframe, the District will provide reasonably prompt written notice to the parties that the informal process is being abandoned and that the District will resume the standard grievance procedures.
5. **Resolution agreements.** If a voluntary resolution of any of the allegations of the complaint is reached, the resolution shall be documented in a written resolution agreement that, upon being approved by the parties, is binding on the parties and has some preclusive effect regarding the resolved allegations.
6. **Ongoing obligations to take steps to ensure that any sex discrimination does not continue.** If the parties' participation in an informal resolution process and the approval of a resolution agreement leaves the District with notice of conduct that, although **not** being pursued as a complaint, may reasonably constitute sex discrimination or retaliation prohibited under Title IX, then the District and the Title IX Coordinator have ongoing obligations, to the extent necessary, to 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. See 34 C.F.R. §§ 106.44(f)(1)(vii) and 106.44(k)(1).

### III. Timeframes and extensions

The District normally intends to conclude the grievance procedures within approximately 90 calendar days of the date that a Title IX complaint is made by a party or initiated by a Title IX Coordinator, recognizing that in certain circumstances it may be practical to complete the process in less time, and in other circumstances the process may reasonably require more time.

The following are general timeframes that apply to the major stages of the grievance procedures, unless tolled by the parties' voluntary attempt to reach an informal resolution or unless materially extended for good cause and with notice to the parties (as further described below):

<b>Pre-investigation screening and evaluation of the complaint:</b>	15 calendar days from the date the complaint is made
<b>Investigation and determination:</b>	
1. When the <b>same person</b> serves as the investigator and decisionmaker:	60 calendar days from the date the notice of the allegations is provided to the complainant
2. When assigned to <b>different</b> individuals:	
• Investigation:	<ul style="list-style-type: none"> <li>• 40 calendar days from the date the notice of the allegations is provided to the complainant.</li> </ul>
• Determination:	<ul style="list-style-type: none"> <li>• 20 calendar days from the date the decisionmaker receives the investigatory record and report and evidence.</li> </ul>
<b>Appeal:</b>	20 calendar days from the date a request for an appeal is filed.

Regarding the general timeframes identified above:

1. Notice of an extension decision does not need to be provided for any *de minimis* deviation from the general timeframes provided above (e.g., a deviation of one or two days to account for a deadline that would otherwise fall on a weekend, holiday, etc.).
2. The 90-day approximation for typical completion of the grievance procedures assumes that, in the typical case, one or more of the major stages will be finished earlier than general timeframe established for that stage, and it also assumes that not every determination of a complaint will be appealed.
3. If it is known at the outset of the grievance procedures that the general timelines for the major stages will be materially affected by, for example, school break schedules, the Title IX Coordinator may immediately notify the parties of the expected adjustments to the general timeframes. However, the District will continue to process pending complaints during the summer months.



4. It is expected that the general timeframes for the investigation stage (or the joint investigation and determination stage) will have the greatest variability and is particularly likely to encounter good cause for an extension.
5. If the target date for completing a major stage of the grievance procedures passes and if a party has not received a notice of an extension and a reason for the extension, the party's primary remedy is to contact the Title IX Coordinator, who will ensure that the District communicates a prompt update regarding the timeframes to all parties.

Any party or witness may, for good cause, request (1) the rescheduling of an investigative interview or other meeting; or (2) a limited extension of a specific deadline that applies to the party or witness. Any such request shall be submitted in writing to the Title IX Coordinator, investigator, decisionmaker, or appeal decision-maker, as applicable to the relevant stage of the proceedings. Upon request, the Title IX Coordinator will assist a party or witness in making and routing such requests to the appropriate person.

The Title IX Coordinator, investigator, decisionmaker, or appeal decisionmaker (as applicable to the specific stage of the proceeding) may grant such a request, and may also self-initiate such a delay, rescheduling, or extension, upon determining that there is good cause and that approving the request would not be unduly prejudicial to any of the parties or unreasonably extend the conclusion of the grievance procedures.

The appropriate agent of the District or a designee shall provide the complainant and respondent with prompt written notice of any decision to extend a timeline or to grant or deny a request for an extension of a specific deadline. Such notice shall include the reason(s) for the action. To the extent a given deadline applies to multiple parties, any extension of the deadline automatically applies to all such parties.

If a complaint of sex discrimination under Title IX also constitutes a complaint of pupil discrimination under Chapter PI 9 of the Wisconsin Administrative Code, and if a requested or contemplated delay/extension would prevent the District from reaching a determination of the complaint within 90 calendar days, the District's agents shall evaluate whether it is necessary or appropriate to request the parties' consent to the delay/extension.

Good cause may include considerations such as the temporary absence or unavailability of a party or witness, reasonable time for a party to confer with an advisor and prepare for an investigative interview; concurrent law enforcement activity; the complexity of the allegations; or the need for language assistance or accommodation of disabilities. In evaluating whether good cause exists with respect to a party's request, the District may take into account the party's history of requesting delays or extensions and the reasons for any such prior requests.

Although the agents of the District are expected to make reasonable efforts to accommodate the schedules of parties and witnesses, the District also may not, without good cause, materially deviate from its own designated timeframes for the grievance process. Accordingly, the District retains discretion to grant a shorter delay or extension than was requested. Further, in some cases, the District may deny a scheduling request and, if necessary, proceed with the grievance procedures in the absence of a party or witness, a party's filing/response, or a witness.

**Voluntary Waivers of Timeframes.** In instances where the District's grievance procedures grant the parties a certain minimum time period (e.g. to submit a response to the evidence or to submit an appeal) a party may voluntarily waive all or part of such time period by communicating their voluntary waiver to the Title IX Coordinator, investigator, decisionmaker, or other agent of the District involved in implementing the relevant aspect of the grievance procedures.

#### **IV. Consolidation of complaints**

When the allegations of sex discrimination or retaliation arise out of the same facts or circumstances, the District may elect to consolidate complaints of sex discrimination and/or retaliation (1) against more than one respondent; (2) by more than one complainant against one or more respondents; or (3) by one party against another party (e.g., multiple allegations that were made separately or counter-allegations). When the identity of the parties is not identical, efficiency advantages associated with possible consolidation must be weighed against any privacy rights and against the privacy concerns of the different parties.

#### **V. Concurrent investigation and consideration of multiple potential grounds for a determination of responsibility/misconduct**

If the allegations sex discrimination or retaliation set forth in Title IX complaint could also constitute or fairly encompass allegations of conduct that could constitute (1) discrimination under a different law, or (2) a violation of a District policy or rule (including any District code of conduct that may be applicable to the respondent), or (3) any other established grounds for the imposition of possible disciplinary sanctions, then the District may, at its discretion, investigate the facts and circumstances related to such other legal or policy standards using these grievance procedures and apply the facts, as found through the investigation, to all potential grounds for a finding of responsibility/misconduct and possible discipline. Similarly, if alleged

conduct arising out of the same facts or circumstances as the conduct that is alleged to constitute sex discrimination or prohibited retaliation may be grounds for a finding of a violation of law or policy or other potential misconduct, the District may elect to concurrently investigate such related conduct or charges via the investigation initiated under these grievance procedures. Unless otherwise required by law, the investigation and determinations reached through the Title IX grievance procedures shall constitute sufficient processing of any such related, overlapping, or intertwined complaint(s), allegations, or charges that may arise out of the same facts or circumstances as the allegation(s) of Title IX discrimination.

In all cases involving such concurrent investigation and concurrent consideration of such additional allegations or charges, the District's agents implementing the grievance procedures are responsible for appropriately notifying each affected party that an investigative interview, meeting, or other proceeding will address such additional, potentially-disciplinary matters as part of a concurrent investigation. At the determination stage of these grievance procedures, if an agent of the District reaches a conclusion that any party committed any violation or engaged in any misconduct that is **not** a determination of whether sex discrimination or retaliation occurred under Title IX, then the District's agents are also responsible for adequately identifying the rationale and any specific basis (e.g., any federal law, state law, and/or a local policy or rule) for any such additional, non-Title IX determinations or conclusions.

#### **VI. Retaliation is prohibited**

No official, employee, or agent of the District, student, or any other person over whom the District exercises some authority may intimidate, threaten, coerce, or unlawfully discriminate against any individual (1) for the purpose of interfering with any right or privilege secured by Title IX or the Title IX regulations, or (2) because the individual has made a report or complaint, or testified, assisted, participated, or exercised a legal right to refuse to participate in any manner in an investigation or proceeding conducted under a District nondiscrimination policy or these grievance procedures. This non-retaliation provision does **not** preclude the District from (1) requiring an employee or other authorized agent of the District to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing; or (2) imposing consequences for an employee's or agent's refusal to cooperatively participate or otherwise assist in such matters.

#### **VII. Bad faith conduct is prohibited**

To the extent permitted by law, the District reserves authority to appropriately address and impose consequences for bad-faith conduct by individuals who make a report or complaint, testify, assist, or participate in any manner in a Title IX investigation or other Title IX proceeding. For example, the District may impose lawful consequences for making a materially false statement in bad faith in the course of any proceeding that is conducted under the auspices of the District's Title IX obligations. However, a determination that a report or complaint of sex discrimination or prohibited retaliation was not substantiated, standing alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

#### **VIII. Supportive measures relating to allegations of sex-based harassment**

Supportive measures, as described and defined in the Title IX regulations and elsewhere in this rule, are to be offered and coordinated based on notice to the Title IX Coordinator of conduct that reasonably may constitute sex discrimination or prohibited retaliation under Title IX. When a complaint alleging sex discrimination (including sex-based harassment) or retaliation has been made, the obligation to consider, offer, and coordinate supportive measures extends to both "complainants" and "respondents." Supportive measures are available at least through the resolution of a pending complaint.

Supportive measures are intended to be individualized and context-sensitive. The range of possible supportive measures that, in appropriate cases and when consistent with Title IX, may be available to complainants and respondents in connection with a **complaint of sex-based harassment** includes the following:

1. Possible changes in class schedules, for a student.
2. Extensions of time for coursework, rescheduling of tests and examinations, or the provision of alternatives for course completion or other academic support or accommodations, including providing support in structuring academic support or accommodations with applicable District staff.
3. Possible changes in work schedules, work locations, or work duties, for an employee.
4. Modified participation by a party in a District-sponsored activity.
5. Permitting/approving an authorized temporary leave of absence.
6. The imposition of "no contact" directives between or among parties.
7. Adjustments to the supervision provided by the District.
8. The creation of a personal safety plan.
9. The provision of counseling services or referrals for professional support services.

10. Scheduled “check ins” between the party and an appropriate administrator or supervisor to discuss current circumstances and any new or modified needs.
11. Jointly planned and District facilitated communications to specific persons that are intended to facilitate meeting the party’s individual needs for support and/or to help protect the party’s privacy.
12. Individualized prevention and awareness training.
13. Such other supportive measures as may be appropriate and consistent with the definition and purpose of supportive measures as set forth in the federal Title IX regulations.

In addition, as described elsewhere in this rule, the parties to a complaint of sex-based harassment or other forms of sex discrimination may submit requests to have a District decision relating to supportive measures reviewed by an impartial employee, and, if appropriate, having the District decision modified or reversed.

#### **IX. Range of disciplinary sanctions for sex-based harassment**

After a determination through these grievance procedures that a party is responsible for sex-based harassment prohibited under Title IX, any disciplinary sanctions that the District may impose will depend on the nature of the misconduct and the individual’s then-current status as a student, employee, or other person connected to the District’s education program or activity. Disciplinary sanctions that are issued or recommended as a result of such a determination of responsibility are intended as consequences for past misconduct and/or as a deterrent against any future sex-based harassment.

1. **Students.** The range of possible disciplinary sanctions or recommended sanctions for students includes but is not limited to suspension from school, expulsion from school, and disciplinary suspension of eligibility to participate in District-sponsored extracurricular activities. The District may also prohibit the student from being present on District property or at certain District-sponsored events or activities to an extent that exceeds actions that would be allowable as supportive measures. A disciplinary no-contact directive may be put in place. This provision does not modify any student’s rights under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.
2. **Employees.** The range of possible disciplinary sanctions or recommended sanctions for employees includes but is not limited to a formal reprimand, an indefinite demotion or salary reduction, a disciplinary reassignment exceeding what may be allowed as a supportive measure, an unpaid suspension, contract nonrenewal, and termination of employment. At the District’s discretion, such sanctions may be structured with or without special conditions, such as notice of a zero-tolerance policy for any prospective related violations, or a directive prohibiting the employee from being present on District property or at certain District-sponsored events or activities to an extent that exceeds actions that would be allowable as supportive measures. A disciplinary no-contact directive may be put in place.
3. **Other persons.** The range of possible disciplinary sanctions or recommended sanctions for other persons includes but is not limited to suspension from or the termination of a District-authorized role (e.g., volunteer), termination or nonrenewal of contracts, and a directive prohibiting the individual from being present on District property or at certain District-sponsored events or activities to an extent that exceeds actions that would be allowable as supportive measures. A disciplinary no-contact directive may be put in place.

#### **X. Range of remedies for sex-based harassment**

Remedies are measures provided, as appropriate, to a complainant or any other person who the District has identified as having had their equal access to the District’s education program or activity limited or denied by sex discrimination, including sex-based harassment. The measures are provided to restore or preserve that person’s equal access after the District makes a determination that that sex discrimination occurred.

Remedies are intended to be context-sensitive. The range of possible remedies that the District may provide includes but is not limited to measures that might have been provided or available as supportive measures. However, in some cases, remedies may burden a respondent to a greater extent than is permissible in connection with supportive measures. Remedies can also include measures that, for example, target ongoing prevention and awareness among persons participating in District programs and activities or that attempt to monitor and improve the quality of the workplace, school, or program environment so that students, employees, and others are safe and free from sex-based discrimination and harassment.

## Definitions

Within the Title IX grievance procedures set forth in this rule:

- **Business days** means days that the main administrative office of the District is staffed, in person or virtually, for responding to regular business and public contacts. Business days never include Saturday or Sunday.
- The terms “**written**” or “**in writing**” include a notice or communication provided in hard copy format via hand delivery or via U.S. Mail to the address of record or in an electronic format via an email sent to an email address that has been issued by the District or that has been provided by the intended recipient.
- With respect to a communication sent by electronic mail, an email is deemed to be **delivered** when it was first electronically available to be accessed by the recipient, and delivery presumptively occurs on the same day as the email was sent. With respect to a communication sent by U.S. Mail, the communication is deemed **delivered** on (1) the date reflected on any confirmation of delivery or delivery receipt; or (2) three business days after the communication was sent by First Class Mail if no delivery confirmation was requested.
- Proof by a **preponderance of the evidence** means that a decision-maker must determine, based on an evaluation of all relevant and permissible evidence, whether alleged facts are more likely than not to be true.

In connection with any report or complaint that alleges a sexual assault and when (1) the absence of the consent of the alleged victim is a relevant element of the alleged offense, and (2) the alleged victim is considered legally competent to potentially give consent:

- Unless otherwise required by law in connection with the District’s evaluation, investigation, or determination of the alleged conduct, the terms **consent** and **without consent** shall be determined using the definition found in section 940.225(4) of the state statutes, subject to the following for these District-related purposes: (1) a finding that conduct occurred without the consent of the alleged victim needs to be proven by the evidentiary standard established in these grievance procedures; and (2) the words and actions of the alleged victim are to be evaluated from the perspective of what a reasonable person would understand them to mean, such that if the conduct is found to have occurred without the consent of the alleged victim under the relevant standard, then a showing that the respondent had formed a subjective belief that the alleged victim had consented is not a defense that defeats the finding of an absence of consent.

The following terms within this rule have the definitions specified in the federal Title IX regulations, including all applicable exclusions, exceptions, and clarifications of scope found in the federal regulations. See 34 C.F.R. Part 106; see especially 34 C.F.R. §§106.2 and 106.10. Paraphrasing the applicable regulatory provisions:

- **Complainant means:**
  - A **student or employee** who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or the Title IX regulations; or
  - A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or the Title IX regulations and who was participating or attempting to participate in the District’s education program or activity at the time of the alleged sex discrimination.
- **Respondent** means a person who is alleged to have violated the District’s prohibition on sex discrimination.
- **Party** means a complainant or respondent.
- **Complaint** means an oral or written request to the District that objectively can be understood as a request for the District to investigate and make a determination about alleged discrimination under Title IX or the Title IX regulations.
- **Supportive measures** means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:
  - Restore or preserve that party’s access to the District’s education program or activity, including measures that are designed to protect the safety of the parties or the District’s educational environment; or
  - Provide support during the District’s grievance procedures under § 106.45, and if applicable § 106.46, or during the informal resolution process under § 106.44(k).
- **Disciplinary sanctions** means consequences imposed on a respondent following a determination under Title IX that the respondent violated the District’s prohibition on sex discrimination (or retaliation as prohibited under Title IX).

- **Remedies** means measures provided, as appropriate, to a complainant or any other person the District identifies as having had their equal access to the District'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 District's education program or activity after the District determines that sex discrimination occurred.
- **Relevant** means related to the allegations of sex discrimination under investigation as part of the District's Title IX 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.
- **Sex-based harassment** prohibited by the Title IX regulations is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in § 106.10, that is any of the following:
  - **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.
  - **Hostile environment harassment.** 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 District's education program or activity (*i.e.*, creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
    1. The degree to which the conduct affected the complainant's ability to access the District's education program or activity;
    2. The type, frequency, and duration of the conduct;
    3. The parties' ages, roles within the District's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
    4. The location of the conduct and the context in which the conduct occurred; **and**
    5. Other sex-based harassment in the District's education program or activity.
  - **Sexual assault** meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including but not limited to rape, sexual assault with an object, and groping.
  - **Dating violence** meaning 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:
      - The length of the relationship;
      - The type of relationship; and
      - The frequency of interaction between the persons involved in the relationship.
  - **Domestic violence** meaning 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**
    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.
  - **Stalking** meaning 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.