

## Interim Grievance Procedures for Sexual Harassment

Title IX is a federal law that prohibits discrimination on the basis of sex in any educational program or activity that receives federal financial assistance. Title IX prohibits sexual harassment as well as sexual violence such as rape, sexual assault and sexual coercion; regardless of gender; and regardless of whether or not a criminal report is filed.

On May 19, 2020, the United States Department of Education (US DOE) Office for Civil Rights issued new Title IX regulations. The effective date for implementation of these new Title IX regulations is **August 14, 2020**.

### **Purpose**

The Hawaii State Department of Education (HIDOE) will develop a permanent Hawaii Administrative Rule (HAR) to address the new Title IX regulations. The new Title IX regulations prescribe a grievance process for complaints of sexual harassment that must be followed in order to comply, and prior to imposing any type of disciplinary sanction. Therefore, HIDOE has established Interim Grievance Procedures for Sexual Harassment (Interim Procedures) to address complaints of sexual harassment until the new HAR is completed. The Interim Procedures establish a grievance process for addressing reports and complaints of sexually harassing conduct against students in any program or activity of the HIDOE. The HIDOE is committed to ensuring that students experience an educational environment free of discrimination and harassment, including sexual harassment.

- a. The HIDOE shall take immediate and appropriate steps to stop the sexual harassment that occurs in an educational program or activity, as defined in the Interim Procedures, in order to prevent recurrence and remedy the effects of sexual harassment on the complainant(s) or others, as appropriate.
- b. The Civil Rights Compliance Branch (CRCB) is responsible for the coordination and implementation of these procedures. Responsibilities of the CRCB include monitoring formal complaints of sexual harassment, investigating formal complaints of sexually harassing conduct, disseminating notice of the contact information for the Title IX Coordinator(s), as well as implementing procedures to address sexually harassing conduct, training HIDOE students, employees, volunteers, and other third parties regarding their rights and responsibilities as it relates to sexual harassment.
- c. These Interim Procedures apply to conduct of students enrolled in a HIDOE school during the regular school year, summer session, or intersessions, regardless of age, as well as the conduct of both current and former HIDOE employees, volunteers, and third parties, if the alleged conduct occurred in the HIDOE's educational program or activity, as defined in the Interim Procedures.
- d. The HIDOE shall comply with Title IX of the Educational Amendments of 1972, Public Law 92-318, in administering the Interim Procedures.

### **1. Definitions**

“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to any employee of an elementary and secondary school.

This means that when any HIDOE employee has notice of sexual harassment or allegations of sexual harassment, they must report such knowledge to their administrator or supervisor.

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Administrators and supervisors must then report the information received to the Civil Rights Compliance Branch (CRCB).

“Notice” includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator or any HIDOE employee, and observation or witnessing of sexually harassing conduct by any HIDOE employee.

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

“Consent” means an affirmative, conscious, and voluntary agreement to engage in agreed upon forms of sexual contact. If the student is a subject of sexual assault and is under the age of consent, it shall be deemed that no consent was given.

“CRCB” means the Civil Rights Compliance Branch, the entity within the HIDOE responsible for ensuring the HIDOE is in compliance with, and implements federal and state laws and regulations, and internal HIDOE policies and rules pertaining to the civil rights of both students and employees. The CRCB is also responsible for monitoring and/or conducting investigations of discrimination on the basis of sex, including sexual harassment.

“Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition dating violence includes, but is not limited to sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

“Domestic violence” means violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabiting with, or has cohabitated with, the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Hawaii;<sup>1</sup> or by any other person against an adult or youth victim who is protected from the person’s acts under the domestic or family violence laws of the State of Hawaii.<sup>2</sup>

“Educational program or activity” means locations, events, or circumstances over which the HIDOE exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

“Formal complaint” means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the HIDOE investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the HIDOE with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator, and by any additional designated method.

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<sup>1</sup> See Haw. Rev. Stat. §586-1, Haw. Rev. Stat. §709-906.

<sup>2</sup> Id. See also, Haw. Rev. Stat. §571-2.

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“Document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.

“HIDOE” means the Hawaii State Department of Education.

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

“Sexual Assault” means any attempted or actual sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent.

- Rape is the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
- Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory rape is sexual intercourse with a person who is under the statutory age of consent.

“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the HIDOE conditioning the provision of an aid, benefit, or service of the HIDOE on an individual’s participation in unwelcome sexual conduct; (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the HIDOE’s education program or activity; or (3) “Sexual assault,” “dating violence,” “domestic violence,” or “stalking.”

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others; or suffer substantial emotional distress. For purposes of this definition, “course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly or through third parties by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property. “Reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim. “Substantial emotional distress” means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

“Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the HIDOE’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the HIDOE’s educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of

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deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The HIDOE must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the HIDOE to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

### 2. Time Frame to Complete the Grievance Process

- a. The grievance process, including appeals, shall be completed within 90 calendar days.
- b. This timeframe can either be temporarily delayed, or extended for good cause with written notice to the complainant and respondent of the delay or extension and the reason for the action. Good cause may include considerations such as:
  - i. The absence of a party, a party's advisor, or a witness;
  - ii. Concurrent law enforcement activity; or
  - iii. The need for language assistance or accommodation of disabilities.
- c. If the grievance process is temporarily delayed or extended for good cause beyond the 90-calendar day timeframe, the investigator will notify the complainant and the respondent in writing of the status of the grievance process, and thereafter provide an update on status every 30 calendar days.

### 3. Confidentiality

- a. Confidentiality shall be maintained of the identity of any individual who has made a report or complaint of sexual harassment, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex harassment, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA),<sup>3</sup> or as required by law, or to carry out the purposes of Title IX and these Interim Procedures, including the conduct of any investigation, hearing, or judicial proceeding arising thereafter.

### 4. How to Report Allegations of Sexual Harassment

- a. Any individual may make a report of sexual harassment, either verbally or in writing.
- b. Individuals may make reports of sexual harassment and/or allegations of sexual harassment by the following methods:
  - i. In-person communication;
  - ii. Communication via mail;
  - iii. Communication via e-mail; and/or
  - iv. Communication via telephone.

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<sup>3</sup> 20 U.S.C. § 1232g; 34 CFR Part 99.

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- c. Reports may be made directly to the Title IX Coordinator or any school employee, including school administrators, faculty and staff.

### 5. Response to Allegations of Sexual Harassment

- a. When HIDOE has actual knowledge of sexual harassment, it must respond in a manner that is not deliberately indifferent.
- b. Deliberate indifference exists if the HIDOE's response to sexual harassment is clearly unreasonable in light of the known circumstances.
- c. Upon receipt of a report of sexual harassment the HIDOE must take the following steps:
  - i. Promptly contact the complainant to discuss the availability of supportive measures;
  - ii. Consider the complainant's wishes with respect to supportive measures;
  - iii. Inform the complainant of the availability of supportive measures with or without filing a formal complaint; and
  - iv. Explain to the complainant, the process for submitting a formal complaint.
- d. Before the imposition of any disciplinary sanctions or other actions that are not supportive measures against the respondent, the HIDOE must follow the grievance procedure for formal complaints outlined in Section 7, Grievance Procedures for Formal Complaints.

### 6. Submitting a Formal Complaint of Sexual Harassment

- a. If a complainant desires to initiate the Title IX grievance process, the complainant must submit a formal complaint.
- b. The formal complaint must be signed by the complainant, or otherwise indicate that the complainant is the one filing the formal complaint. The signature on the formal complaint may be either a physical signature or a digital signature. Parents or legal guardians may act on behalf of minor students, including with respect to filing a formal complaint.
- c. Alternatively, the Title IX Coordinator may submit a formal complaint, if the complainant chooses not to submit one. In such situations, the Title IX Coordinator is not considered the complainant or a party to the grievance process.
- d. The formal complaint may be filed with the Title IX Coordinator in-person, by mail, by e-mail, or through any additional designated methods.
- e. At the time the formal complaint is submitted, the complainant must be participating in or attempting to participate in an educational program or activity.
- f. There are no time limitations as to when a complainant may submit a formal complaint, as long as the complainant is still participating in or attempting to participate in an educational program or activity.

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### 7. Grievance Procedures for Formal Complaints

- a. Treatment of the complainant or a respondent in response to a formal complaint of sexual harassment may constitute sexual discrimination under these grievance procedures.
- b. Submission of a formal complaint initiates the grievance process.
- c. Upon receipt of a formal complaint, the HODOE must provide a written notice of allegations to the parties, if known. The written notice of allegations must include the following information:
  - i. Notice of the grievance process;
  - ii. Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
    - a. The identities of the parties involved in the incident, if known;
    - b. The conduct allegedly constituting sexual harassment, if known; and
    - c. The date and location of the alleged conduct, if known;
  - iii. A statement that the respondent is presumed not responsible for the alleged conduct, and that a determination regarding responsibility will be made at the conclusion of the grievance process;
  - iv. A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
  - v. That parties may inspect and review the evidence;
  - vi. Information about available informal resolution processes, if any;<sup>4</sup> and
  - vii. Inform parties of any policy that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- d. If, during the grievance process, the investigator decides to investigate allegations about the complainant or respondent that were not included in the original written notice of allegations, the investigator must provide written notice of the additional allegations to the parties whose identities are known.
- e. Formal complaints must be dismissed for the following reasons:
  - i. The conduct alleged would not constitute sexual harassment, as defined in these Interim Procedures, even if proved;
  - ii. At the time the alleged conduct occurred, the complainant was not participating in or attempting to participate in an educational or activity;
  - iii. The conduct did not occur in the context of an educational program or activity; or
  - iv. The conduct did not occur against a person in the United States.
- f. If a formal complaint is dismissed, a written notice of the dismissal and reason(s) therefore will be sent simultaneously to the parties within three (3) calendar days of such determination.

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<sup>4</sup> §106.45(b)(2)(i)(A) requires that the Notice of Allegations include notice of the grievance process, including any informal resolution process. However, §106.45(b)(9)(iii) states that informal resolutions cannot offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student. Therefore, the Notice of Allegations for student/employee allegations will not include information about an informal process.

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- i. The written notice of the dismissal shall include a statement indicating the parties' right to appeal the decision of dismissal.
  - ii. If a party wishes to appeal the dismissal, the request for appeal must be received within seven (7) calendar days of the date on the written notice of dismissal.
  - iii. If a request to appeal the dismissal is not received by the date indicated in the written notice of dismissal, the decision to dismiss the formal complaint is considered final.
- g. Where a formal complaint is dismissed, the HIDEOE may still proceed to address the alleged conduct according to other applicable HIDEOE rules and/or Board of Education (BOE) policies.
- h. If a formal complaint is not dismissed, a CRCB Equity Specialist will be assigned to investigate the allegations contained therein.
- i. Should information arise during the course of the grievance process that could potentially result in the dismissal of the formal complaint, the investigator, in consultation with the Title IX Coordinator, will review the information to determine whether the formal complaint should be dismissed at this point in the investigation.
  - i. If it is determined that none of the mandatory bases of dismissal of a formal complaint exists, the grievance process will continue.
  - ii. If it is determined that one or more of the mandatory bases supporting dismissal of a formal complaint exists, the formal complaint will be dismissed. The Title IX Coordinator will simultaneously issue a written notice of dismissal to the complainant and respondent within three (3) calendar days of such determination.
- j. Right to An Advisor(s)
  - i. Both parties have the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.
  - ii. Both parties are not limited in the choice or presence of an advisor in any meeting or grievance proceeding, however, the HIDEOE may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
  - iii. Advisors will not be able to respond and/or answer on behalf of their respective party.
  - iv. During meetings and/or interviews, parties and their respective advisors will be allowed to caucus.
  - v. The advisor may be present during any meetings or interviews for their respective party.
- k. Gathering of Evidence
  - i. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility is on the HIDEOE, and not the parties.

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- ii. The HIDEOE will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the party's voluntary, written consent to do so for the grievance process is obtained.
  - iii. Both parties must have equal opportunities to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- l. The HIDEOE will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- m. A party, whose participation is expected or invited, must be provided a written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
- n. Inspection and Review of the Evidence
  - i. Once all evidence has been gathered, and before the investigative report is completed, both the complainant and respondent must have an opportunity to inspect and review the evidence that is directly related to the allegations raised in the formal complaint. This includes evidence that will not be relied upon in reaching a determination regarding responsibility, and inculpatory and exculpatory evidence whether obtained from a party or other source.
  - ii. The evidence must be sent to the parties and their respective advisors, if any, in either hard copy or electronic format before the completion of the investigative report.
  - iii. Parties have ten (10) calendar days to provide a written response to the evidence gathered.
  - iv. The investigator must take into consideration the parties' written responses when drafting the investigation report.
- o. Investigation Report
  - i. The investigator will create an investigation report that fairly summarizes the relevant evidence.
  - ii. At least ten (10) calendar days prior to a determination of responsibility by the decision-maker, the investigator must send to each party, and the party's advisor, if any, a copy of the investigation report for their review and written response.
  - iii. The investigation report may be sent in either electronic format or a hard copy.

### **8. Decision-Making Process**

- a. Written Relevant Questions for Parties and Witnesses
  - i. After the investigation report is sent to the parties, but before a determination regarding responsibility is made, the decision-maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness.

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- ii. Each party must be provided the answers to the written relevant questions, and allowed additional, limited follow-up questions from each party.
  - iii. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
  - iv. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.
- b. The decision-maker shall objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence. Any credibility determinations reached may not be based on a person's status as a complainant, respondent, or witness.
- c. The decision-maker must issue a written determination regarding responsibility. To reach this determination, the decision-maker shall apply the preponderance of the evidence standard of evidence.
- d. The written determination must include the following information:
  - i. Identification of the allegations potentially constituting sexual harassment, as defined above;
  - ii. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;
  - iii. Findings of fact supporting the determination;
  - iv. Conclusions regarding the application of the HIDEO's Code of Conduct to the facts;
  - v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and whether remedies designed to restore or preserve equal access to the HIDEO's education program or activity will be provided by the HIDEO to the complainant; and
  - vi. The procedures and permissible bases for the complainant and respondent to appeal.
  - vii. The description of the procedures and permissible bases for the complainant and respondent to appeal, shall include the identity of the decision-maker for the appeal's process.
- e. The decision-maker shall provide the written determination to the parties simultaneously.
- f. The determination regarding responsibility becomes final either on the date that the parties are provided with the written determination of the result of the appeal, if an appeal was filed, or if an appeal was not filed, the date on which an appeal would no longer be considered to be timely.

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### 9. Appeals

- a. The parties have seven (7) calendar days from the date of the written determination to submit a request for an appeal.
  - i. The request for appeal shall be submitted to the CRCB.
- b. Both the complainant and the respondent have the right to an appeal from:
  - i. A determination regarding responsibility; and
  - ii. A dismissal of the formal complaint or any allegation(s).
- c. An appeal shall be made on the following bases:
  - i. Procedural irregularity that affected the outcome of the matter;
  - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
  - iii. The Title IX Coordinator, the investigator(s), and/or the decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome.
- d. Upon the filing of an appeal, CRCB will send the notice of appeal to the other party.
- e. The notice of appeal will include the following information:
  - i. The identity of the decision-maker for the appeal;
  - ii. Description of the process for the appeal, including the timeframe for submitting written responses in support of or challenging the appeal;
  - iii. Information regarding who, where, and how to submit the parties' written responses; and
  - iv. A copy of the request for an appeal that was received.
- f. Both parties have an equal opportunity to submit written statements in support of, or challenging, the outcome.
  - i. Parties have seven (7) calendar days from the date of the notice of appeal to submit their written responses.
  - ii. Parties' written responses are to be sent to the decision-maker for the appeal.
- g. Upon the end of the seven (7) calendar time frame for parties to submit their written responses, the decision-maker for the appeal has 21 calendar days to review the parties' response, and any other relevant information; and render a decision on the appeal.
- h. The decision-maker for the appeal must issue a written decision describing the result of the appeal and the rationale for the result.
  - i. The written decision shall be provided simultaneously to the complainant and the respondent.

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- ii. The written decision of the appeal should be sent to the parties by the last day of the timeframe for the decision-maker for the appeal to render a decision.
- iii. Information to be included in the written decision of the appeal includes:
  - a. The outcome(s)/determination(s) being appealed;
  - b. The basis for the appeal;
  - c. The decision regarding the appeal; and
  - d. The rationale for the decision for the appeal.
- iv. The written decision regarding the appeal will include a statement that the decision is final.

### **10. Supportive Measures**

- a. Possible supportive measures include:
  - i. Counseling;
  - ii. Extensions of time or other course-related adjustment;
  - iii. Modifications of work or class schedules;
  - iv. Campus escort services;
  - v. Mutual restrictions on contact between parties;
  - vi. Leaves of absences;
  - vii. Increased security and monitoring of certain areas of campus; and
  - viii. Other similar measures.
- b. The HODOE must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the HODOE to provide supportive measures.

### **11. Emergency Removals and Administrative Leave**

- a. Emergency removals
  - i. Prior to removing a respondent on an emergency basis, an individualized risk analysis must be conducted.
  - ii. The purpose of the individualized risk analysis is to determine whether there is an immediate threat to the physical health or safety of any student or other individuals and that the threat justifies removal.
  - iii. The immediate threat must arise out of the allegations of sexual harassment as defined above.
  - iv. If a determination is made that the respondent will be removed, the respondent must be provided notice of the removal and an opportunity to challenge the decision to be removed from an educational program or activity.
    - a. The HODOE will send the respondent written notice of the removal.
    - b. A challenge to the removal must be received within five (5) calendar days of the date of the written notice of removal.
    - c. The burden is on the respondent to show that the decision for the removal was incorrect.
    - d. The principal/designee has three (3) calendar days to render a decision and communicate this decision to the respondent.

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- e. The decision is considered final.
  - v. Whether or not an emergency removal will be implemented should be determined when a report of sexual harassment is first received, as well as at various stages of the Title IX grievance process, as appropriate.
  - vi. The emergency removal provision does not modify rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.
- b. Administrative leave
- i. The HDOE has the discretion to place an employee respondent on administrative leave during the pendency of the grievance process.
  - ii. Whether or not such leave is warranted may be determined at any stage of this grievance process.
  - iii. The administrative leave provision does not modify rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

### **12. Conflicts of Interest and Bias**

- a. The Title IX Coordinator, investigator, and decision-maker cannot have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
  - i. Should a concern(s) of conflict of interest and/or bias on the part of the aforementioned individuals arise, the situation will be assessed.
  - ii. If it is determined that such a conflict of interest and/or bias exists, the individual will be removed from the grievance process, and another individual, who was not previously involved in the grievance process, will be assigned to that particular role.

### **13. Standard of Evidence**

- a. The standard of evidence for determining responsibility is the Preponderance of the Evidence. This standard is met if it is determined that more likely than not that the allegation occurred.

### **14. Presumption of Responsibility**

- a. There is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

### **15. Informal Resolution Process**

- a. No informal resolution processes will be offered as part of the grievance process.

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### 16. Possible Disciplinary Sanctions and Remedies

- a. Possible disciplinary sanctions for employees include:
  - i. Verbal warning
  - ii. Written reprimand
  - iii. Suspension
  - iv. Termination
  
- b. Possible disciplinary sanctions for students include:
  - i. Correction and conference with student
  - ii. Detention
  - iii. Crisis removal
  - iv. Individualized instruction related to student's problem behaviors
  - v. In-school suspension
  - vi. Interim alternate education setting
  - vii. Loss of privileges
  - viii. Parent conferences
  - ix. Time in office
  - x. Suspension of one to ten school days
  - xi. Suspension of eleven or more school days
  - xii. Saturday school
  - xiii. Disciplinary transfer
  - xiv. Referral to alternative education programs
  - xv. Dismissal
  - xvi. Restitution
  
- c. Remedies
  - i. Remedies must be designed to restore or preserve equal access to educational programs or activities.
  - ii. Remedies may include the same individualized services as "supportive measures," however, the remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
  - iii. Possible Remedies include:
    - a. Adjustment of academic schedules and coursework
    - b. Provision of academic support services
    - c. Provision of medical support services
    - d. Provision of psychological support services

### 17. Retaliation

- a. No employee of the HIDOE will intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or these Interim Procedures, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under these Interim Procedures.
  
- b. Intimidation, threats, coercion, or discrimination, including charges against an individual for Code of Conduct violations that do not involve sex discrimination or sexual

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harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

- c. Complaints alleging retaliation may be filed according to the same grievance procedures as that for complaints of sexual harassment.

### 18. Record Keeping Requirements

- a. The HIDOE shall keep records of reports and complaints of sexual harassment. Such records include:<sup>5</sup>
  - i. Each sexual harassment investigation, including any determinations regarding responsibility;
  - ii. Any disciplinary sanctions imposed on the respondent;
  - iii. Any remedies provided to the complainant designed to restore or preserve equal access to the HIDOE's education program or activity;
  - iv. Any appeal, including the result of the appeal; and
  - v. All materials used to train Title IX Coordinators, investigators, and decision-makers. The HIDOE must make these training materials publicly available on its website.
- b. The HIDOE shall keep records of its response to sexual harassment. These include records of any actions, including:
  - i. Supportive measures that were taken in response to a report or formal complaint of sexual harassment. If supportive measures were not provided to a complainant, documentation of the reasons why such a response was not clearly unreasonable in light of the known circumstances;
  - ii. Documentation for each report received, and for each instance, the basis for its conclusion that the HIDOE's response was not deliberately indifferent; and
  - iii. Documentation of the measures that were taken to restore and/or preserve access to the HIDOE's educational programs or activities.

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<sup>5</sup> Section 106.45(b)(10)(i)(A) of the regulations requires the HIDOE to also maintain for seven years "[...] any audio or audiovisual recording or transcript required under paragraph (b)(6)(i) of this section, [...]" Section 106.45(b)(6)(i) concerns live hearings that post-secondary institutions are required to hold, but are optional for elementary and secondary schools. As a K-12 public school system, the HIDOE has determined that live hearings will not be part of the Title IX grievance process. Section 106.45(b)(10)(i)(A) also requires the HIDOE to maintain for seven years, records of any informal resolution, and the results of such informal resolution. The HIDOE has determined that informal resolutions will not be a part of the Title IX grievance process.