



**FORMAL RESOLUTION PROCESS FOR ALLEGED CIVIL RIGHTS VIOLATIONS
DISCRIMINATORY HARASSMENT & TITLE IX COMPLAINTS
Effective August 14, 2020**

Hampton City Schools will act on any formal or informal allegation or notice of violation of policy GBAB/JHGB (Discriminatory Harassment and Retaliation) that is received by the Title IX Coordinator or a member of the Title IX Team. If the allegation is within the scope of Title IX sexual harassment, a formal written complaint must be filed. Technology-facilitated Formal Resolution can be made available, should the parties not be able or willing to meet in person.

1. Overview

The process below apply to qualifying allegations of discrimination, harassment and retaliation involving students or employees that fall under the jurisdiction of policy GBAB/JHGB.

The process below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by policy GBAB/JHGB will be addressed through procedures elaborated in student and employee handbooks.

2. Notice/Complaint

Glossary and definition of terms available in policy GBAB/JHGB

Upon receipt of a complaint or notice of an alleged violation of policy GBAB/JHGB, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps.

The Title IX Coordinator will initiate at least one of three responses:

- 1) Supportive measures because the Complainant does not want to proceed formally; and/or

- 2) An Informal Resolution Process; and/or
- 3) A Formal Resolution Process including an investigation.

The investigation and resolution process will determine whether policy GBAB/JHGB has been violated. If so, the division will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

3. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of policy GBAB/JHGB, the Title IX Coordinator will engage in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:

- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired. If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because the facts indicate a compelling threat to health and/or safety.
- The Title IX Coordinator works with the Complainant to ensure they are aware of their rights pursuant to policy GBAB/JHGB.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers an Informal Resolution Process, or a formal investigation and resolution process. The Formal Resolution Process is required if the allegation involves adult on student conduct.
 - If an Informal Resolution Process is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, and may seek to determine if the Respondent is also willing to engage in informal resolution. No Formal Resolution Process is initiated, though the Complainant can elect to initiate one later, if desired.
 - If a Formal Resolution Process is preferred, the Title IX Coordinator initiates the investigation process and determines whether the scope of the investigation will address:
 - an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate issue, based on the nature of the complaint.

A. Threat Assessment

In many cases, the Title IX Coordinator may determine that a Threat Assessment should be conducted by the Threat Assessment Team as part of the initial assessment. A Threat Assessment can aid in critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what method may be most successful;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing).

B. Dismissal of Complaint of Alleged Title IX Violations Related to Sexual Harassment (Mandatory and Discretionary)¹

If the allegation is specific to a potential Title IX violation related to sexual harassment, Recipient must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) Even if proved, the conduct alleged in the formal complaint would not constitute sexual harassment as defined in policy GBAB/JHGB; and/or
- 2) The conduct did not occur in an educational program or activity controlled by Hampton City Schools, and/or the HCS does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a formal complaint, a complainant is not employed by or participating in or attempting to participate in the education program or activity of the recipient.

Hampton City Schools may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by the recipient; or
- 3) Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the division will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal

¹ These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR Part 106.45.

below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate it or re-file it.

4. Counterclaims

Hampton City Schools is obligated to ensure that the resolution process is not abused for retaliatory purposes. The division permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by the Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the resolution process below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of policy GBAB/JHGB.

5. Right to an Advisor

The parties may each have an Advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Decision-maker(s).

Witnesses are not entitled to an Advisor or to have their parent(s), representative or attorney present when questioned during the course of an investigation. Current student and employee witnesses are required to participate in the investigative process.

A. Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the HCS community. However, the Advisor may not also serve as an interpreter for a party.

Parties also have the right to choose not to have an Advisor.

B. Advisor's Role

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Hampton City Schools cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, Hampton City Schools is not obligated to provide an attorney.

C. Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and Hampton City Schools' policies, procedures and processes. However, the Recipient is not required to share information gathered in the process with the Advisors until the completion of the investigation report.

D. Advisor Violations of the Resolution Process

All Advisors are subject to the same policies, procedures and processes whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address HCS officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-makers.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this process will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

E. Sharing Information with the Advisor

The division expects that the parties may wish to have HCS share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

Hampton City Schools also provides a consent form that authorizes the division to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before the division is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, the Recipient will not comply with that request.

F. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Hampton City Schools. HCS may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the division's privacy expectations.

G. Expectations of an Advisor

The division generally expects an Advisor to adjust their schedule to allow them to attend meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The division may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

H. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired). If the Advisor is an attorney, the party(ies) must notify the Investigator or the Title IX Coordinator at least two business days prior to the meeting to allow the Recipient's attorney to attend.

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured.

6. Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with the Formal Resolution Process. While there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose. Hampton City Schools encourages parties to discuss this with their Advisors before doing so.

A. Informal Resolution

Informal Resolution can include three different approaches:

- When the parties agree to resolve the matter through an alternate resolution mechanism (e.g., mediation, restorative practices);
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; or
- When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Resolution Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Resolution Process.

Prior to implementing Informal Resolution, HCS will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the division.

The Title IX Coordinator will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

B. Alternate Resolution

Alternate Resolution is an informal process (e.g., mediation or restorative practices) by which a mutually agreed upon resolution of an allegation is reached. All parties must consent to the use of Alternate Resolution.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Cleared violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of complaint;
- Complaint complexity;
- Emotional investment/intelligence of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Alternative approaches can inform formal resolution, as in a formal resolution model infused with restorative practices. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

C. Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria in that section above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the division are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of policy GBAB/JHGB and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal resolution Process will resume at the same point where it was

paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

D. Negotiated Resolution

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the division. Negotiated Resolutions are not appealable.

7. Resolution Process Pool

The Formal Resolution Process relies on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this process to all students, parents/guardians of students, employees, prospective students, and prospective employees.

A. Pool Member Roles

Members of the Pool are trained annually, and can serve in in the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To serve in a facilitation role in informal resolution or Alternate Resolution
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

B. Pool Membership

The Pool includes:

- Members of the Division Leadership Team
- Senior Directors of Elementary School Leadership
- Senior Director of Secondary School Leadership
- Director of Special Education
- Coordinator of Athletics
- Principals
- Assistant Principals

C. Pool Member Training

The Pool members receive annual training. This training includes, but is not limited to:

- The scope of the Discrimination and Harassment Policy and Resolution Processes
- How to conduct investigations that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to conduct an investigation and resolution process including appeals and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations

Specific training is also provided for Appeal Decision-makers and intake personnel. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted here: [HCS Website - Title IX Training Materials](#)

8. Formal Resolution Process: Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of the investigation and allegations (the "NOIA") to the Respondent upon commencement of the Formal Resolution Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations,

- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable processes,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the division presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the division's policy on retaliation,
- Information about the privacy of the process,
- Information on the option for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that policy GBAB/JHGB prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- The name(s) of the Investigator(s) and Decision Maker(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) and/or Decision Maker(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official HCS records, or emailed to the parties' HCS-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

9. Resolution Timeline

Hampton City Schools will make a good faith effort to complete the resolution process within 45-60 business days, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how

much additional time will be needed to complete the process.

10. Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation, usually within two (2) business days of determining that an investigation should proceed.

11. Ensuring Impartiality

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator, Investigator(s), and Decision-maker(s), may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Superintendent.

The Formal Resolution Process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

Hampton City Schools operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

12. Investigation Timeline

Investigations are completed expeditiously, normally within 30-45 business days, though some investigations may take additional time, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

HCS will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

13. Delays in the Investigation Process and Interactions with Law

Enforcement

The division may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

The division will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. HCS will promptly resume the investigation and resolution process as soon as feasible. During such a delay, the Title IX Coordinator will implement supportive measures as deemed appropriate.

Hampton City Schools' action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

14. Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record. The Investigator is not required to interview all witnesses identified by the Parties.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with the Title IX Team, initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize their interview/statement, if necessary

- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
 - Notice should inform the parties of their right to have the assistance of an Advisor who may be present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions. The Investigator is not required to interview all witnesses or ask all questions suggested by the Parties.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- The Investigator(s) will share information with the parties just before completion of the investigation report. There is no required sharing of evidence with the parties prior to this point in the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the Recipient does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each

page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor)

- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
- The Investigator(s) shares the report with the Title IX Coordinator and/or legal counsel for their review and feedback
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a determination regarding responsibility. The parties are also provided with a file of any directly related evidence that was not included in the report

15. Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees or students of Hampton City Schools are expected to cooperate with and participate in the investigation and/or resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The Recipient will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

16. Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

17. Evidentiary Considerations in the Investigation

The investigation of allegations that are not within the scope of Title IX sexual harassment will not include: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's prior behavior, unless such questions and evidence

about the Complainant's prior behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant.

The investigation of Title IX sexual harassment will not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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.

18. Referral to Decision-maker(s)

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter to a Decision-maker(s).

The Title IX Coordinator will select an appropriate Decision-maker(s) from the Pool depending on whether the Respondent is an employee or a student.

19. Decision-maker(s) Composition

The Title IX Coordinator will designate a single Decision-maker or a three-member panel from the Pool, at the sole discretion of the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the investigation.

The Title IX Coordinator may not serve as a Decision-maker.

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at the conclusion of the investigation. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of reviewing the investigative report. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

20. Deliberation, Decision-making, and Standard of Proof

After the Investigator has sent the investigative report to the parties and before reaching a determination regarding responsibility, the Decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Both parties have five (5)

business days from the date the final investigative report is issued to submit written relevant questions to the Decision-maker(s). The Decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

In Title IX sexual harassment cases, 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. The Decision-maker(s) must issue a written determination regarding responsibility. To reach this determination, Decision-maker(s) will determine if the preponderance of the evidence supports the allegations made by the Complainant or the rebuttal made by the Respondent.

The written determination includes, as applicable:

- a. Identification of the allegations potentially constituting sexual harassment as defined in § 106.30;
- b. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding the application of relevant School Board policies to the facts;
- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the division imposes on the respondent, and whether remedies designed to restore or preserve equal access to the HCS education program or activity will be provided to the complainant; and
- f. Hampton City Schools' processes and permissible bases for the complainant and respondent to appeal.
- g. The division must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that HCS provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.
- h. The Title IX Coordinator is responsible for effective implementation of any remedies.

21. Sanctions

Factors considered when determining a sanction/responsive action may include, but are

not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this process are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

A. Student Sanctions

The following are typical sanctions that may be imposed upon students singly or in combination:

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any HCS policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Alternative Placement:* A student may be placed temporarily in an alternative learning environment.
- *Suspension:* A temporary removal from school-related activities and/or school property for a designated period of time. Suspensions may include but are not limited to instructional activities, extracurricular programs and events. Alternative services and/or placements may be made available.
- *Expulsion:* An exclusion from all school-related activities such that the student is not permitted to attend school or any school-related functions within the school division and is ineligible for readmission for 365 calendar days after the date of the expulsion.
- *Other Actions:* In addition to or in place of the above sanctions, HCS may assign any other sanctions as deemed appropriate.

B. Employee Sanctions

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – Verbal or Written*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Demotion*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, HCS may assign any other sanctions as deemed appropriate.

22. Withdrawal or Resignation While Charges Pending

Students: Should a student Respondent permanently withdraw from Hampton City Schools, the resolution process ends, as the Recipient no longer has disciplinary jurisdiction over the withdrawn student.

However, HCS will continue to address and remedy any systemic issues or variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as Hampton City Schools no longer has disciplinary jurisdiction over the resigned employee.

However, HCS will continue to address and remedy any systemic issues or variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

HCS responses to future inquiries regarding employment references for that individual may include that the former employee resigned during a pending disciplinary matter.

23. Appeals

Note -- this appeal process is based on the finding, not sanctions.

Any party may file a request for appeal, but it must be submitted in writing to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Outcome.

At the discretion of the Title IX Coordinator, a single Appeal Decision-maker or a three-member appeal panel chosen from the Pool will be designated. No one previously involved in any part of the process, including any dismissal appeal that may have been heard earlier in the process, may be designated as the Appeal Decision-maker(s).

The Title IX Coordinator will give the Appeal Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at the conclusion of the investigation. Any Appeal Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of reviewing the investigative report. If an Appeal Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

The request for appeal will be forwarded to the Appeals Decision-maker(s) to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

A. Grounds for Appeal

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) 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
- (C) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the request for appeal do not meet the grounds in this process, that request will be denied and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the request for appeal meet the grounds in this process, then the Appeals Decision-maker(s) will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Decision-maker(s) and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in five (5) business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Decision-maker(s) will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and will render a decision in no more than five (5) business days, barring exigent circumstances

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' HCS-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

B. Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

C. Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Decision-maker(s) may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand.
- In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a review of the investigative report by a new Decision-maker(s).
- The findings of the new Decision-maker can be appealed, once, on any of the three available appeal grounds.

24. Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the HCS community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education for the individual and/or the community
- Permanent alteration of work arrangements for employees
- Provision of safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term supports or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by the Recipient to the Respondent to ensure no effective denial of educational access.

Hampton City Schools will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the division's ability to provide these services.

25. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s), including the Appeal Decision-makers(s).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination.

26. Recordkeeping

As applicable, Hampton City Schools will maintain for a period of at least seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to education programs or activities;
4. Any appeal and the result;
5. Any Informal Resolution and the result;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. Hampton City Schools will make these training materials publicly available on the division's website; and
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent;
 - b. Any measures designed to restore or preserve equal access to education programs or activities; and
 - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Hampton City Schools will also maintain any and all records in accordance with state and federal laws.

27. Disabilities Accommodations in the Resolution Process

Hampton City Schools is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the resolution process.

Students needing such accommodations or support should contact the Director of Special Education/Designee. Employees needing such accommodations or support should contact the Executive Director of Human Resources/Designee. These individuals will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

28. Revision of this Policy and Process

This process will be reviewed and may be updated annually by the Title IX Coordinator. Hampton City Schools reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to processes that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary processes materially with notice (on the HCS website, with the appropriate effective date identified) upon determining that changes to law or regulation require procedural alterations not reflected in this process.

If government laws or regulations change, or court decisions alter, the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such processes generally.

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