

FOR SECOND READING 2 14 22	
<b>Lincoln Public Schools</b> <b>Title IX Policy and Protocol for Reporting and Investigating</b> <b>Sexual Harassment and Retaliation</b>	<b>Date Approved:</b> <hr style="width: 100px; margin: 0 auto;"/>

New Title IX regulations, issued by The Secretary of Education and effective on August 14, 2020, amend the regulations implementing Title IX of the Education Amendments of 1972 (Title IX).

The final regulations specify how recipients of federal financial assistance covered by Title IX, including elementary and secondary schools, must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination.

The revised regulations are intended to effectuate Title IX's prohibition against sex discrimination by requiring recipients to address sexual harassment as a form of sex discrimination in education programs or activities.

The final regulations obligate recipients of federal financial assistance to respond promptly and supportively to persons alleged to be victimized by sexual harassment, resolve allegations of sexual harassment promptly and accurately under a predictable, fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment, and effectively implement remedies for victims.

**DEFINITIONS**

**Actual Knowledge:** Actual Knowledge means notice of sexual harassment or allegations of sexual harassment to any employee of the District, except that this standard is not met when the only official of the District with actual knowledge is the Respondent (where the Respondent is an employee). Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. Complaints must be addressed whenever the District has actual knowledge of the allegation.

**Complainant:** An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Deliberate Indifference:** A District's response to an allegation of sexual harassment that is clearly unreasonable considering the known circumstances.

**Formal Complaint:** A document filed by a Complainant (or the Complainant's parent or guardian if the Complainant is a student) or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the District investigate the allegation(s) of sexual harassment.

**Report:** A report is a notification of an alleged incident of sex discrimination, including sexual harassment, to the Title IX Coordinator or to any District employee. Reports may be made by any person, whether or not the person reporting is the person alleged to be the victim of the conduct that could constitute sex discrimination or sexual harassment.

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

**Retaliation:** Retaliation includes, but is not limited to, coercion, intimidation, interference, punishment, discrimination, or harassment against any member of the School Community in response to that member's oral or written, formal or informal, reporting or filing a complaint of discrimination, including harassment or retaliation, cooperating in an investigation, aiding or encouraging another member of the School Community to report or file a complaint, or for opposing any act or practice believed to be prohibited by any other related or affiliated policy.

**Sexual Harassment (Title IX):** Sexual harassment under Title IX means verbal, physical or other conduct that targets a person based on their sex, and that satisfies one or more of the following:

- *A District employee conditioning educational benefits or services for participation in unwelcome sexual conduct (i.e., quid pro quo);*
- *Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it effectively denies a person equal access to any District or school education program or activity;*
- *Any instance of "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).*

**Supportive Measures:** Individualized services available to the Complainant or Respondent, designed to restore and ensure equal educational access, protect safety, or deter sexual harassment. Supportive measures are non-punitive, non-disciplinary, and cannot unreasonably burden the other party. Supportive measures are available before or after the filing of a formal complaint, or where no formal complaint has been filed, and are coordinated and implemented by the Title IX Coordinator. Supportive measures are generally kept confidential.

In appropriate circumstances, supportive measures may include:

- *Counseling*
- *Extension of deadlines*
- *Modifications to work or class schedule*
- *Increased security/monitoring in parts of a school campus*
- *Mutual restrictions on contact between the parties*

**School Community:** The School Community includes the Lincoln School Committee, administration, faculty, staff, students and volunteers in schools, and parties contracted to perform work for the Lincoln Public Schools, subject to school authority.

## **1. PROTOCOL APPLICATION**

Title IX covers sexual harassment in any District or school education program or activity. This includes locations, events, and circumstances where the District or a school exercises substantial control over the context of the

alleged sexual harassment and the person accused of committing the alleged sexual harassment. Title IX applies to all District and school education programs and activities, whether such programs or activities occur on-campus or off-campus.

While Title IX covers the above definition of "sexual harassment," the District recognizes that the Title IX standard does not capture all conduct that may amount to sexual harassment under District policy and/or other state or federal laws. Therefore, while the District prohibits "sexual harassment" as defined in Title IX, it also prohibits sexually harassing conduct that may fall outside the scope of the Title IX definition.

If the District determines that alleged conduct falls outside of the Title IX scope, but still may constitute sexual harassment under other District policies, the District will investigate each allegation of such conduct and may implement appropriate remedial and/or disciplinary action in accordance with those policies.

## **2. RESPONSIBILITIES**

Each member of the School Community is responsible for:

- ***Complying with this Protocol and related Policy.***
- ***Ensuring that they do not discriminate against, harass, or commit a crime against another person in any District or school education program or activity because of that person's sex.***
- ***Ensuring that they do not retaliate against any other person for reporting or filing a complaint, for aiding or encouraging the filing of a report or complaint, for cooperating in an investigation of sexual harassment and retaliation, or for opposing any act or practice reasonably believed to be prohibited by this Protocol or related Policy.***
- ***Cooperating in the investigation of reports or complaints of sexual harassment and retaliation.***
- ***Responding and intervening appropriately if able to act safely when witnessing discrimination based on sex, including sexual harassment or retaliation, taking place in any District or school education program or activity.***
- ***Cooperating with the District's efforts to prevent, respond effectively to, and eliminate discrimination based on sex, including sexual harassment and retaliation.***
- ***Promptly reporting all information they know concerning possible discrimination on the basis of sex, including sexual harassment and retaliation, to any District employee when they witness or become aware of conduct occurring in any District or school education program or activity or any other circumstance defined and required in this Protocol.***

## **3. COMPLAINT AND REPORTING PROCESS**

### **Reporting Sexual Harassment**

Any person (whether or not they are the victim of the alleged conduct) may report suspected sexual harassment to any District staff member, including the Title IX Coordinator.

Reports may be made in any manner, including in person, by email, by telephone or by mail, at any time, including during non-business hours.

Title IX does not impose a time limit for reporting alleged incidents of discrimination based on sex, sexual harassment or retaliation; however, in order to ensure integrity, promote fairness, and facilitate an effective investigation, every effort should be made to report all instances of alleged sexual harassment or retaliation, as promptly as possible, and, if possible, not later than 180 calendar days after the alleged conduct occurred.

The Title IX Coordinator contact information is as follows\*:

For conduct involving students[A1]:

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Title)

135 Old River Road, PO Box 367, Lincoln, RI 02865

\_\_\_\_\_ (email)

For conduct involving employees[A2]:

\_\_\_\_\_ (Name, usually HR)

\_\_\_\_\_ (Title)

135 Old River Road, PO Box 367, Lincoln, RI 02865

\_\_\_\_\_ (email)

\*For conduct involving both employees and students, or conduct involving third parties, reports may be made to either Title IX Coordinator.

### Mandatory Reporting Guidelines

All non-student members of the School Community are required to report to the appropriate Title IX Coordinator any incident of sexual harassment or retaliation against any student that they witness, are notified of through a student's report or complaint, or that they otherwise become aware of, as soon as practicable, but no later than 24 hours after becoming aware of the incident.

All reports must be made in writing and should include a completed "Title IX Formal Complaint Form" signed by the reporting party. No mandatory report under this section may be filed anonymously. Failure to comply with this mandatory reporting requirement or this Protocol may lead to disciplinary action.

*The Title IX Formal Complaint Form can be obtained by visiting the District's website or by contacting either Title IX Coordinator.*

### Responding to Reports of Sexual Harassment

The District shall respond promptly and meaningfully to reports of conduct that may constitute Title IX sexual harassment in a manner that is not "deliberately indifferent."

The District shall investigate every formal complaint of sexual harassment and respond meaningfully to every known report of sexual harassment. Any staff member who receives a report of sexual harassment must immediately contact the Title IX Coordinator so that prompt measures can be taken.

Upon receiving any report of sexual harassment, the Title IX Coordinator must contact the alleged victim (known as the "Complainant"), confidentially, regarding:

- *The availability of supportive measures (even if no formal complaint is filed);*
- *The Complainant's wishes concerning supportive measures;*
- *The right to file a formal complaint;*
- *The purpose of filing a formal complaint (including initiation of an investigation); and*
- *The process by which to file a formal complaint.*

Supportive measures shall be offered to the Respondent, even if no formal complaint is filed.

Only upon a final determination that the Respondent is responsible for the alleged conduct may disciplinary sanctions be imposed upon the Respondent.

The Title IX Coordinator shall document in writing the supportive measures offered/provided (or why no supportive measures were offered/provided) to the Complainant and Respondent.

#### **4. INITIATION AND INVESTIGATION OF A FORMAL COMPLAINT; THE RESOLUTION PROCESS**

##### *Form, Preparation and Timeliness of Formal Complaints*

Complainants are encouraged, but not required, to file a formal complaint using the Title IX Formal Complaint Form. Where requested or needed, assistance may be provided in preparing said form.

The formal complaint must be made in writing and signed (by hand or digitally) to indicate that the Complainant is the person filing the formal complaint. The formal complaint may be filed with the Title IX Coordinator in person, by mail or by electronic mail.

If the Complainant declines to file a formal complaint, the Title IX Coordinator shall consider whether to sign a formal complaint to initiate an investigation over the Complainant's wishes. This decision may be appropriate when safety or other similar concerns lead the Title IX Coordinator to conclude that a non-deliberately indifferent response to actual knowledge of Title IX sexual harassment could reasonably require the District to investigate and potentially sanction a Respondent. The decision to sign a formal complaint must be documented in writing, along with the rationale for initiating the formal complaint. Attempts will be made to obtain the cooperation of any student who is an alleged victim of sexual harassment; however, where the cooperation of the alleged student victim is not received, the District shall investigate the allegations, to the extent feasible.

If a formal complaint is not made by either the Complainant or the Title IX Coordinator, the District may still investigate the report of sexual harassment in accordance with its Non-Discrimination Policy.

At the time of filing a formal complaint, an alleged victim must be participating or attempting to participate in a District or school program or activity.

##### *Timeline for Completing the Grievance Process*

All good faith efforts will be made to complete the grievance process promptly from the date a formal complaint is filed with or signed by the Title IX Coordinator.

Title IX Personnel

The Title IX Coordinator shall designate the Investigator and Decision Maker based on the following guide:

<b>Complaints Involving Two or More Students</b>			
<b>Title IX Personnel</b>	<b>PK/Elementary</b>	<b>Middle</b>	<b>Secondary</b>
<b>Title IX Coordinator</b>	Assistant Superintendent		
<b>Investigator</b>	Assistant Principal/Principal		
<b>Decision Maker</b>	Director of Special Education/Director of Human Resources/or appointed by District Legal Counsel or Superintendent		
<b>Appeal Decision Maker</b>	Superintendent		

<b>Complaints Involving Students and Non-Student/Staff</b>			
<b>Title IX Personnel</b>	<b>PK/Elementary</b>	<b>Middle</b>	<b>Secondary</b>
<b>Title IX Coordinator</b>	Director of Human Resources		
<b>Investigator</b>	Assistant Principal/Principal		
<b>Decision Maker</b>	Assistant Superintendent/Director of Special Education/Finance Director		
<b>Appeal Decision Maker</b>	Superintendent		

<b>Complaints Involving Staff and Non-Students - Building Level</b>				
<b>Title IX Personnel</b>	<b>PK/Elementary</b>	<b>Middle</b>	<b>Secondary</b>	<b>District</b>
<b>Title IX Coordinator</b>	Director of Human Resources			
<b>Investigator</b>	Assistant Principal/Principal			
<b>Decision Maker</b>	Assistant Superintendent/Director of Special Education/Finance Director			
<b>Appeal Decision Maker</b>	Superintendent			

<b>Complaints Involving Central Office Administration</b>	
<b>Title IX Personnel</b>	<b>District</b>
<b>Title IX Coordinator</b>	Director of Human Resources or Assistant Superintendent
<b>Investigator</b>	Appointed by District Legal Counsel or Superintendent
<b>Decision Maker</b>	Appointed by District Legal Counsel or Superintendent
<b>Appeal Decision Maker</b>	Appointed by District Legal Counsel or Superintendent

## **Guidelines for Investigating and Decision Making**

**Step 1: Title IX Coordinator must issue written notice to both parties.** Upon receipt of a formal complaint, the Title IX Coordinator must issue written notice of the complaint to both parties, prior to any initial interview of the Respondent. The written notice must include written notice of the allegations (including the identities of both parties), the grievance process, the appeal process, available supportive measures, and possible disciplinary sanctions and remedies. The written notice must also include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination of responsibility is made at the conclusion of the grievance process. The written notice must also inform the parties that they have the right to an advisor of their choice (who may, but need not be, an attorney), and the right to inspect and review the District's evidence. If applicable, the written notice must also inform the parties that they are prohibited by the Code of Conduct from making false statements or knowingly submitting false information during the grievance process.

If additional allegations are added during the investigation, additional written notice must be provided. **Step 1(A):**

### **Dismissals**

- **Mandatory Dismissals:** If the Title IX Coordinator determines that the complaint (or some of the allegations contained therein) alleges conduct which does not meet the Title IX definition of sexual harassment or alleges sexual harassment that did not occur in any District or school education program or activity, or the alleged sexual harassment did not occur in the United States, the Title IX Coordinator must dismiss the allegations for the purposes of Title IX.

The District must then address the allegations in any manner deemed appropriate through the District's other policy, code of conduct or protocols.

- **Discretionary Dismissals:** In the event the Complainant notifies the Title IX Coordinator in writing that they wish to withdraw the formal complaint (or some allegations contained therein), or the Respondent is no longer employed by or enrolled in the District, or specific circumstances prevent the District from gathering sufficient evidence to reach a determination, the District may dismiss the allegations.
- **Dismissal Procedures:** In the event of a dismissal (mandatory or discretionary), the Title IX Coordinator must send prompt written notice of the dismissal, including the underlying reasons for the dismissal, to the parties. Both parties have the right to Appeal a dismissal.

### **Step 1(B): Informal Resolution**

In cases that do not involve an allegation of sexual harassment between a student and a District employee, and if appropriate, the Title IX Investigator may offer for the parties to engage in an informal resolution. To proceed with the informal resolution process, both parties must enter the process voluntarily; participation in informal resolution may not be imposed upon a party as a condition for students or staff returning to or participating in school activities.

Any informal resolution process will be conducted by a trained facilitator who is free from conflict or bias surrounding the parties and the issues contained in the complaint. If the parties are not satisfied with the outcome of the informal resolution process, or if they do not agree to participate in informal resolution, the investigation procedures outlined below should continue.

## **Step 2: Gathering Evidence**

The Title IX Coordinator shall designate an Investigator to conduct the investigation. All good faith efforts will be made to complete the investigation promptly upon the initiation of the formal complaint, except for good cause, as documented in the investigative file. If the Investigator deems an extension necessary, the Investigator must notify the parties in writing of the delay.

During the investigation, the burden of gathering evidence and the burden of proof remains with the District. The investigation may include personal interviews with the Complainant(s), the Respondent(s), and others who have knowledge of the alleged incident(s) or circumstance(s) giving rise to the complaint. The investigation may also consist of other methods deemed pertinent by the Investigator, including gathering physical evidence. As stated above, the parties must receive written notice of any investigative interviews, meetings, or hearings. A party's medical, psychological, and similar treatment records cannot be accessed or used by the District unless the school obtains the party's voluntary, written consent to do so.

The District must provide an equal opportunity for the parties to present facts and expert witnesses and other inculpatory and exculpatory evidence. The District must not restrict the ability of the parties to discuss the allegations or to gather evidence and must afford the parties the same opportunity to select an advisor of the party's choice (who may be, but need not be, an attorney).

## **Step 3: Inspection of Evidence and Investigative Report**

The Investigator must fairly summarize the evidence gathered in an investigative report. Findings should be written in a factual way, and the Investigator must avoid making any final determinations of responsibility for the alleged sexual harassment. Any credibility determinations may not be based on an individual's status as Complainant, Respondent or witness.

All parties will be provided with an equal opportunity to review evidence gathered during the investigation and the investigative report. Prior to the completion of the investigative report, the Investigator will send to each party and the party's advisor, if any, the evidence subject to inspection in an electronic form or a hard copy, and the parties will have 10 days to submit a written response to the evidence. Any written responses shall be considered by the Investigator prior to finalizing the investigative report.

Upon the completion of the investigative report, the parties will be provided with a copy of the investigative report for their review, and if desired, written response(s). Written responses from the parties will be required within 10 days of receipt of the investigative report and will be incorporated into the final investigative report.

Once the investigative report is finalized, the Investigator will send it to the Complainant, Respondent, and the Decision Maker.

#### **Step 4: Written Questions**

Following the completion of the investigative report, the designated Decision Maker 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 for each party.

If the Decision Maker decides not to allow a question, an explanation must be provided.

Questions and evidence regarding the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are proffered to prove that someone other than the Respondent is responsible for the alleged conduct, or if the questions or evidence concern specific events of the Complainant's prior sexual behavior with Respondent and are offered to prove consent.

#### **Step 5: Standard of Review; Determination of Responsibility**

The Decision Maker receives special training on impartiality and relevancy of evidence, enabling them to use independent, unbiased judgment in deciding responsibility for the alleged conduct. The Decision Maker is tasked with objectively evaluating and weighing the relevant evidence and reaching conclusions about whether the Respondent is responsible for the alleged sexual harassment **by a preponderance of the evidence.**

After carefully weighing the evidence, the Decision Maker must issue a written decision regarding the responsibility, including a description of the procedural steps, findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, disciplinary sanctions imposed on the Respondent, if any, and whether remedies will be provided to the Complainant. The report must also advise the parties of their right to appeal the decision. The written decision must be issued to both parties simultaneously.

#### **5. Disciplinary Action, Corrective Action, and Remedial Measures**

If the Respondent is determined to be responsible for the conduct, the Complainant will be made aware of any sanctions imposed on the Respondent that directly relate to the Complainant. The Respondent will not be notified of any individual remedies offered or provided to the Complainant. The District will effectively implement remedies for the Respondent, Complainant, and where appropriate, for the broader School Community.

The remedies will be designed to restore or preserve equal access to the education program or activity for a Complainant, end the harassment, eliminate the hostile environment, prevent its recurrence, and remedy its effects.

Remedies may include but are not limited to: disciplinary sanctions against the Respondent, up to and including long-term suspension or termination of the employment relationship; counseling for Respondent; a security escort for the Complainant; implementation of a safety plan to limit or eliminate potential shared classes or activities; training or retraining of District employees; and changes to District policies and/or services. Any disciplinary action will be in accordance with due process rights under state law and any applicable collective bargaining agreement.

These procedures do not limit the District from removing a student or employee from a program or activity on an emergency basis based on an immediate threat to an individual's physical health and safety or placing an employee on administrative leave during the pendency of the grievance process.

## **6. Appeals**

Either party may appeal the final decision of the Decision Maker or the District's decision to dismiss a formal complaint (or any allegations contained therein), within 10 calendar days of receiving the Title IX Determination of Responsibility or notice of dismissal. The grounds for appeal may include, but are not limited to the following:

- Procedural irregularity affected the determination
- New evidence has been discovered that was not reasonably available at the time the determination was made
- Conflict of interest on the part of the Title IX Coordinator, Investigator, or Decision Maker — and that conflict affected the outcome
- Additional grounds, so long as they apply equally to and are available to both parties

Upon receipt of a timely appeal, the Appeal Decision Maker must notify parties in writing of the appeal and implement equal appeal procedures. Each party must have an equal opportunity to submit a written statement supporting or challenging the outcome or dismissal. The Appeal Decision Maker must review the comprehensiveness and accuracy of the investigation and conclusions, and consider any written statements submitted by the parties. The Appeal Decision Maker must send a written decision to the parties simultaneously within 30 days of the appeal.

The appellate decision is the final decision of the District and is not appealable within the District. The appellate decision may be appealed pursuant to Rhode Island and federal laws.

## **7. Options Available at Anytime**

At any time, whether or not an individual files a formal complaint or a report under this Policy and Protocol, an individual may file a complaint with the Office for Civil Rights, U.S. Department of Education, or with other governmental agencies, or may initiate a civil action.

If a complaint is filed with the Office for Civil Rights, U.S. Department of Education (OCR), it must be filed in writing no later than 180 days after the alleged act(s) of discrimination. OCR may waive its 180-day time limit based on OCR policies and procedures.

- ***Office for Civil Rights, U.S. Department of Education***

5 Post Office Square, Suite 900, 8th floor, Boston, MA 02109

[Email: OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov)

Phone: (617) 289-0111

Fax: (617) 289-0150

TTY: (877) 521-2172

[www.ed.gov/ocr](http://www.ed.gov/ocr)

- ***Equal Employment Opportunity Commission ("EEOC")***  
 John F. Kennedy Federal Building 475 Government Center, Boston, MA 02203  
 Phone: (800) 669-4000  
 Fax: (617) 565-3196  
 TTY: (800) 669-6820  
[www.eeoc.gov](http://www.eeoc.gov)
- ***Rhode Island Commission for Human Rights***  
 180 Westminster Street, 3rd Floor Providence, RI 02903  
 Phone: (401) 222-2661  
 Fax: (401) 222-2616  
 TTY: (401) 222-2664  
[www.richr.ri.gov](http://www.richr.ri.gov)
- ***Rhode Island Department of Education***  
 255 Westminster Street Providence, RI 02903  
 Phone: (401) 222-4600  
[www.ride.ri.com](http://www.ride.ri.com)

Any person may contact the police or pursue a criminal complaint or prosecution under state or federal criminal law at any time. The District encourages individuals to file criminal complaints as they deem appropriate.

**8. Record Keeping**

All records of the District's investigation, including the written determinations; records of any appeal and associated materials; records of any informal resolution process; materials used to train Title IX Coordinators, Investigators, Decision Maker and informal resolution facilitators; and records of supportive measures provided in response to a complaint or report of sexual harassment, shall be maintained by the District for 7 years.

In addition, copies of all written decisions shall be maintained in the offices of the Superintendent, Assistant Superintendent, and Human Resources. All files must be kept confidential.

**9. Retaliation Prohibited**

Retaliation against any person for exercising their rights under Title IX is prohibited and constitutes a separate violation of the Title IX Sexual Harassment Policy. Any member of the School Community who believes they, or another School Community member, has been the victim of retaliation, should report the conduct or file a complaint. Students may make a report or complaint to any school faculty, staff, or administrator.

Reports or complaints of retaliation by any other member of the School Community should be to the appropriate Title IX Coordinator. The District will investigate all reports and complaints promptly and in an impartial and as confidential a manner as possible, to ensure prompt and appropriate action.

*Approved by the Lincoln School Committee: \_\_\_\_\_(date)*