



# ADMINISTRATIVE PROCEDURE

TITLE IX, DISCRIMINATION AND HARASSMENT ON THE BASIS OF SEX

0104  
Procedure No.  
July 1, 2023  
Date

## I. PURPOSE:

- A. Prince George’s County Public Schools (“PGCPS”) does not tolerate discrimination or harassment in its education program and activities against students, employees, or applicants for either on the basis of actual or perceived sex, sexual orientation, gender identity or expression.<sup>1</sup> This administrative procedure has been created to enforce Board Policy 0104 (Title IX) and embodies PGCPS’ commitment to ensuring that each student and employee can learn and work in an environment free from discrimination.
- B. All procedures outlined below apply to complaints of discrimination and/or harassment on the basis of sex. Other complaints of discrimination or harassment should be filed pursuant to Administrative Procedure (AP) 4170.

## II. POLICY:

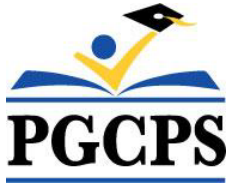
Title IX requires educational institutions to maintain policies, practices, and programs that do not discriminate against anyone based on sex. Under this law, males and females are expected to receive fair and equal treatment in all arenas of public schooling: recruitment, admissions, educational programs and activities, course offerings and access, counseling, financial aid, employment assistance, facilities and housing, health and insurance benefits, marital and parental status, scholarships, sexual harassment, and athletics. (Board Policy 0104)

## III. BACKGROUND:

- A. Prohibited Acts – The following are prohibited acts that are addressed through this administrative procedure:
  - 1. Dating violence;
  - 2. Discrimination on the basis of sex;
  - 3. Discrimination on the basis of gender identity or expression;
  - 4. Domestic violence;

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<sup>1</sup> Title IX requires that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...” 20 U.S.C. § 1681(a).



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5. Sexual assault;
6. Sexual harassment; and
7. Stalking.

#### B. Title IX Authority and Jurisdiction

1. PGCPS may investigate formal complaints of sexual harassment under Title IX if the acts occur within:
  - a. the United States and
  - b. PGCPS's education program or activity.
2. For the purposes of this administrative procedure, sexual harassment under Title IX is prohibited:
  - a. In PGCPS's "education program and activities" including locations, events, and circumstances in which PGCPS has exercised substantial control over both the Respondent and the context in which the alleged sexual harassment occurred.
  - b. On PGCPS grounds, including at PGCPS-sponsored and school-related events, activities, functions, or programs, whether on or off school grounds; in vehicles owned, leased, or used by PGCPS; or through the use of any electronic devices owned, leased or used by PGCPS.

#### IV. **DEFINITIONS:**

For purposes of this administrative procedure, these terms are subject to the following definitions:

- A. *Actual knowledge* – Notice of sexual harassment, allegations of sexual harassment or allegations of discrimination on the basis of sex or gender identity or expression to any of the following persons: PGCPS's Title IX Coordinator, any PGCPS official who has authority to institute corrective measures on behalf of PGCPS, or any PGCPS employee.
- B. *Appellate member(s)* – An employee who is responsible for reviewing and rendering a decision regarding appeals filed under this administrative procedure by the Complainant or Respondent.



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- C. *Coercion* – The exploitation of authority, use of bribes, threats of force, or intimidation to gain cooperation or compliance.
- D. *Complainant* – An individual who is alleged to be the recipient of conduct that could constitute sexual discrimination or harassment. A *Complainant* may be a student, employee, or applicant for either.
- E. *Consent* – Voluntarily given with sufficient knowledge and comprehension of the subject matter to enable the person giving *consent* to make a knowing decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion. In order to be valid, *consent* must be knowing, voluntary, active, present and ongoing. *Consent* is not present when an individual is incapacitated due to alcohol, drugs, sleep or other condition.
- F. *Decision Maker(s)* – An employee who reviews the investigative report and evidence and issues a written determination to the parties and Title IX Coordinator.
- G. *Discrimination on the basis of gender identity or expression* – Discrimination resulting from the gender identity or expression of an employee or student. This includes, but is not limited to, stereotyping an employee or student based on their gender identity/expression, excluding a student from school programs or employee from work due to their gender identity/expression, refusing to use a student or employee’s preferred pronouns or name, or not allowing a student or employee to use facilities that are consistent with their gender identity.
- H. *Discrimination on the basis of sex* – Includes the sexual harassment definitions below, but is not limited to: failure to provide equal opportunities in athletics; discrimination in a school’s science, technology, engineering, and math (STEM) courses and programs; and discrimination based on pregnancy, childbirth, related medical conditions, breastfeeding, or reproductive health decisions.
- I. *Employee* – Any person who is employed by PGCPS, including volunteers and contractors.
- J. *Formal complaint* – The completion of the “AP 0104 Formal Complaint” form filed by any PGCPS employee, student, or applicant for either, a student’s parent/guardian or the Title IX Coordinator, alleging sexual harassment against a Respondent and requesting that PGCPS investigate the allegation.



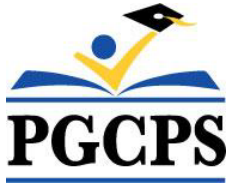
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- K. *Incapacity* –
1. *Mental incapacity* – Temporarily or permanently incapable of appraising or controlling a person's own conduct due to intellectual disability, the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent.
  2. *Physical incapacity* – Bodily impaired or handicapped and substantially limited in ability to resist or flee.
- L. *Informal complaint* – The reporting of alleged discrimination on the basis of sex against a Respondent to any PGCPS staff member in person, by mail, by telephone, or by electronic mail, without the completion of the Title IX formal complaint form.
- M. *Investigator* – An employee who investigates AP 0104 complaints and creates and issues the investigative report. The investigative report is defined below in Section V. Procedures.
- N. *Reasonable person* – A hypothetical person in society who exercises average care, skill, and judgment in conduct and who serves as a comparative standard for determining liability.
- O. *Respondent* – An individual who has been reported to have allegedly committed conduct that could constitute sexual harassment.
- P. *Retaliation* – Intimidation, threats, coercion, or discrimination against an individual for code of conduct violations that do not involve sex discrimination or sexual 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.
- Q. *Sexual assault* – An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting (UCR) system of the Federal Bureau of Investigation (FBI), including: rape, sodomy, sexual assault with an object, fondling, incest, statutory rape.
1. *Dating violence* – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the duration of the



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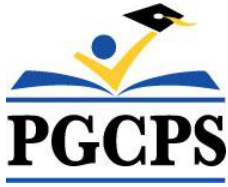
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relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition:

- a. *Dating violence* includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - b. *Dating violence* does not include acts covered under the definition of domestic violence.<sup>2</sup>
2. *Domestic violence* – Includes felony or misdemeanor crimes of violence committed by:
- a. A current or former spouse or intimate partner of the Complainant;
  - b. A person with whom the Complainant shares a child in common;
  - c. A person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner;
  - d. A person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the Maryland receiving grant monies; or
  - e. Any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of Maryland.
3. *Fondling* – The touching underneath the clothing, of the private body parts (genitalia, buttock, or breast) of another person for the purpose of sexual gratification without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
4. *Incest* – Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law including: (i) grandparent and grandchild; (ii) parent and child/stepchild/

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<sup>2</sup> Maryland law defines “abuse” as when someone with whom you have a specific relationship commits one of the following against you: assault in the 1st or 2nd degree; an act that places you in fear of immediate serious bodily harm or actually causes you seriously bodily harm; rape in the 1st and 2nd degree; attempted rape, in any degree; sexual offense in the 3rd or 4th degree; attempted sexual offense, in any degree; stalking; false imprisonment; or revenge porn. MD Code, Fam. Law § 4-501(b)(1).



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- legally adopted child; (iii) siblings of half or full blood; or (iv) uncle or aunt and nephew or niece.
5. *Rape* – The carnal knowledge of a person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  6. *Sexual assault with an object* – The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  7. *Sodomy* – The oral or anal sexual intercourse with another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  8. *Stalking* – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
    - a. Fear for the person’s safety or the safety of others; or
    - b. Suffer substantial emotional distress.
    - c. For the purposes of this definition:
      - 1) *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.
      - 2) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the Complainant.
  9. *Statutory rape* – Nonforcible sexual intercourse with a person who is under the statutory age of consent. Under Maryland law, the age of consent is 16 years of age, so long as the age of the participants is within three (3) years of each other.



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- R. *Sexual harassment* – Conduct on the basis of sex, including gender identity and/or expression, which satisfies one of the following:
1. *Hostile environment* – Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to PGCPS’s education program or activity or denies an employee equal access to employment; or
  2. *Quid pro quo* – An employee of PGCPS, agent, or other person authorized by PGCPS to provide an aid, a benefit, or service under PGCPS education program or activity, who explicitly or impliedly conditions the provision of such aid, benefit, or services on a person’s participation in unwelcome sexual conduct.
- S. *Substantial emotional distress* – Significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.
- T. *Supportive measures* – 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 PGCPS’s education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or deter sexual discrimination and harassment.
1. *Supportive measures* may include, but are not limited to: behavior plan or agreement; referral to professional counselor, Employee Assistance Program, or mental health practitioner; referral to the Office of Student Engagement and School Support; referral to IEP or 504 team (for students with disabilities); conference with parent/legal guardian; creating individual safety plans; designating a staff member to serve as the Complainant or Respondent’s “safe” person; extensions of deadlines or other course-related adjustments; increased security and monitoring of certain areas of the school building; referral to pupil personnel worker; restorative approaches; modifications of work or class schedules or assignments; reflective essay; leaves of absence; mutual restrictions on contact between the parties; online or in-person training on a relevant topic; proximity control; referral to an outside agency for services; and other similar measures.
  2. *Supportive measures* are available to the Complainant and Respondent throughout the process and so long as the parties request them, regardless of





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the filing of a formal complaint, or outcome of the determination of responsibility.

U. *Title IX* – Title IX of the Education Amendments Act of 1972, 20 U.S.C. §§ 1681 *et seq.*, and implementing regulations promulgated by the United States Department of Education, 34 C.F.R. Part 106.

### V. **PROCEDURES:**

#### A. **PGCPS Reporting Options**

1. Student reports of a violation of this administrative procedure may be made to any PGCPS employee, including the Title IX Coordinator, the school principal, or an Associate Superintendent.
2. Employee reports of a violation of this administrative procedure may be made to the supervisor(s), Title IX Coordinator, or Associate Superintendent, where applicable.
3. A report may be made at any time (including during non-business hours) and as soon as possible in order for PGCPS to maximize its ability to respond promptly and effectively. Confirmation of receipt of the complaint will be sent on the next business day. A formal complaint cannot be filed anonymously.
4. Any person may report discrimination on the basis of sex, whether or not the person reporting is the person alleged to be the victim of sexual harassment, in person, by mail, by telephone, by electronic mail, or by using the contact information listed below for the Title IX Coordinator.
5. PGCPS's Title IX Coordinator manages PGCPS's response to reports or complaints of sexual harassment, sexual assault, and dating violence and oversees PGCPS's compliance with Title IX:

Dave Anthony, EEO Administrator and Acting Title IX Coordinator  
Phone: 301-952-6521  
E-mail: [equity@pgcps.org](mailto:equity@pgcps.org)  
Mail: 14201 School Lane, Room 201F, Upper Marlboro, MD 20772





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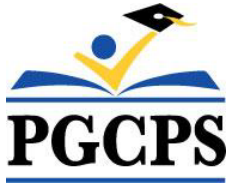
### B. Student Reports Received by PGCPS Employee or Volunteer

1. Any school employee or volunteer who receives a report by a student alleging harassment or discrimination by an adult employee, volunteer, or student should obtain the basic facts of the incident(s) alleged, but should not conduct any further investigation without direction from the Title IX Coordinator. All information received should be forwarded to the Title IX Coordinator, no later than 2 business days.
2. PGCPS employees are to report suspected child physical and mental abuse, child sexual abuse or child neglect pursuant to Administrative Procedure 5145 – Reporting Suspected Child Abuse and Neglect.
3. If the allegations are of a serious criminal nature then the school official shall also contact law enforcement, the Department of Safety and Security Services and the Superintendent.
4. If the suspected abuser is a PGCPS employee, contractor or volunteer, the employee must also forward a copy to:

Employee and Labor Relations Office (ELRO)  
Sasser Administration Building  
14201 School Lane, Room 210  
Upper Marlboro, Maryland 20772  
PH: 301-952-6315  
FAX: 301-952-6187  
Email: [elro.investigation@pgcps.org](mailto:elro.investigation@pgcps.org)

### C. Informal Resolution Process

1. At any time after the filing of a formal complaint and prior to reaching a determination regarding responsibility, the Title IX Coordinator/designee may facilitate a Title IX informal resolution process, such as mediation, that does not involve a full investigation and adjudication.
2. Prior to an informal resolution, the Title IX Coordinator/designee will provide to the parties a written notice describing the allegations, and the requirements of the informal resolution process. A party agreeing to participate in an informal resolution process will not waive either party's right to a formal investigation and adjudication. At any time prior to agreeing to a resolution, any party has the right to withdraw from the Title IX informal resolution process and resume the formal investigation.



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3. Informal resolution will only be pursued with the parties' voluntary, written consent to the informal resolution process. PGCPS will not require the parties to participate in an informal resolution process nor make it a condition of enrollment or employment.
4. The informal resolution process is separate and apart from any other PGCPS mediation process. The informal resolution process can only be offered and take place when there is a formal complaint filed and under investigation.
5. Allegations involving an employee as Respondent shall not be resolved by an informal resolution.

### **D. Information for Complainants and Respondents**

1. After receipt of the formal complaint, the Title IX Coordinator/designee will provide information to the Complainant and Respondent about:
  - a. The investigation process and informal resolution process including a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of investigation process;
  - b. The allegations, including sufficient details known at the time, including the identities of the parties involved in the alleged incident, and the conduct allegedly constituting discrimination or harassment on the basis of sex, if known;
  - c. The Complainant and Respondent's right to have an advisor of his/her choice who may be, but is not required to be, an attorney, at all phases of the process;
  - d. The right to inspect and review evidence; and
  - e. The prohibition against knowingly making false statements or knowingly submitting false information during the investigation process.
2. Additionally, the Complainant shall be provided information about available services and advocacy organizations, and their rights under Title IX of the Education Amendments of 1972 and § 20-602 of the State Government Article, Annotated Code of Maryland.



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### E. Equitable Process

1. When PGCPS has actual knowledge, with or without a formal complaint, of a Title IX violation, PGCPS must promptly respond and take steps to end and remedy any unlawful discrimination and/or harassment.
2. Once the Title IX Coordinator/designee receives a formal complaint, an impartial Investigator and impartial Decision Maker(s) shall be assigned and the Title IX Coordinator/designee will provide a Notice of Investigation to both parties. The Title IX Coordinator/designee will promptly contact the Complainant to complete an initial assessment, discuss and inform the Complainant of the availability of supportive measures, and consider the Complainant's wishes with respect to supportive measures.
3. PGCPS will treat Complainants and Respondents equitably and will offer supportive measures throughout the process, and before disciplining or taking other actions that are not supportive measures against a Respondent. Prior to the issuing of the Determination of Responsibility, PGCPS will apply supportive measures only.
4. If an investigation results in a determination of responsibility for discrimination and/or harassment on the basis of sex, remedies will be provided that are designed to restore or preserve equal access to PGCPS's education programs, activities, and employment. Remedies may include the same individualized services as supportive measures but also may include disciplinary sanctions or other actions.

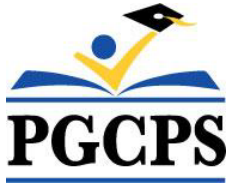
### F. Investigation of a Formal Complaint

1. Burden of Proof

PGCPS bears the burden of proof and is responsible for gathering evidence that would aid in reaching a decision regarding responsibility.

2. Privileged or Confidential Information

In general, a party's medical and counseling records are confidential. PGCPS will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege (*e.g.*, attorney-client, doctor-patient), unless the individual holding such privilege has waived the privilege voluntarily.



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### 3. Prior Sexual Behavior

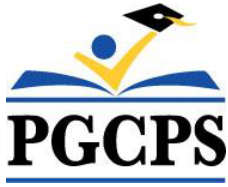
Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, 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.

### 4. Opportunity to Present Witnesses and Evidence

- a. Either party may present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence at any time prior to the issuance of the investigative report.
- b. Following receipt of the Notice of Interviews, the parties shall have seven (7) business days to review and submit written, relevant questions that a party wishes to be asked of any party or witness by the Title IX Coordinator/designee. Questions shall be submitted to the Title IX Coordinator/designee. The Title IX Coordinator/designee shall provide each party with answers to any relevant question(s) posed by a party.
- c. Additional follow-up questions, limited only to the scope of the prior questions, may be presented by either party within three (3) business days after receipt of the Title IX Coordinator/designee's answers to relevant questions.
- d. Only relevant questions will be entertained. The Investigator will explain to the party proposing the questions any decision to exclude a question as not relevant.

### 5. Party Advisor

Either party may 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. However, neither party's advisor will be permitted to question witnesses, nor participate in interviews or meetings in which the represented party is not a participant.



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### 6. Parental Involvement

Nothing herein is intended to supplement any legal right of a parent or guardian to act on behalf of a student.

### 7. Written Notices

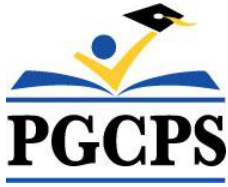
Parties will receive written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient time (generally no less than three (3) business days, absent exigent circumstances) for the party to prepare to participate if the party's participation is invited or expected.

### 8. Evidence Review Period

- a. Any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the Title IX Coordinator/designee does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a party or other source, will be provided to both parties at the conclusion of the Investigator's evidence gathering. The evidence will be redacted of personal information, not relevant to the investigation, prior to sharing with parties, including but not limited to names.
- b. Prior to completion of the investigative report, the Title IX Coordinator/designee will send each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The parties will have ten (10) business days to submit a written response, which the Investigator will consider prior to completion of the investigative report.

### 9. Investigative Report

Following the evidence review period, the Investigator will issue an investigative report that fairly summarizes relevant evidence. The investigative report will be sent to each party and the party's advisor, if any, for their review and written response.



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## 10. Determination Regarding Responsibility

At the conclusion of the investigation, the Investigator will provide the investigative report and evidence to the Decision Maker(s). The Decision Maker(s) will review the investigative report and evidence and issue a full and final, written determination to the parties and Title IX Coordinator, no less than ten (10) business days after the closing of the investigative report review period. The Title IX Coordinator shall review the investigative report and provide all findings and the recommended resolution to the Employee and Labor Relations Office (ELRO), which may take further action, if warranted.

### G. Evaluation and Standard of Evidence

1. The Title IX Coordinator/designee must determine that an allegation has been proven by a preponderance of the evidence (more likely than not) in order to make a determination of responsibility.
2. An objective evaluation of all relevant evidence and credibility determinations will be made and shall not be based upon a person’s status as a Complainant, Respondent, or witness.

### H. Time for Resolution

1. The Decision Maker(s) will issue a written determination regarding responsibility as soon as practical but not later than 120 calendar days following receipt of the formal complaint.
2. Appeals will be resolved within 15 business days of receipt of the request for appeal. See “Appeals” section below.
3. The time for resolution, and any then-pending deadlines, may be extended for good cause and with written notice to both parties. Good cause may include, but is not limited to, the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

### I. Remedies and Disciplinary Measures for Students and Staff

1. A determination of responsibility may result in remedies, which may include, but are not limited to, disciplinary measures.



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2. The Student Rights and Responsibilities Handbook provides the Code of Student Conduct and disciplinary response levels for students. Possible disciplinary remedies and sanctions include, but are not limited to and are in no particular order:
  - a. Detention;
  - b. Loss of privileges;
  - c. In-school suspension;
  - d. Short-term or long-term suspension; and
  - e. Expulsion.
3. Remedies and disciplinary measures for employees, volunteers, and contractors may include, without limitation:
  - a. Nondisciplinary corrective actions;
  - b. Progressive discipline;
  - c. Suspension;
  - d. Written reprimand; and
  - e. Termination.

#### **J. Withdrawal of Formal Complaint**

The Complainant may request to withdraw the formal complaint any time prior to the Determination of Responsibility being issued to the Complainant and Respondent. The request to withdraw must be in writing to the Title IX Coordinator. If the Complainant does not wish to proceed with a formal complaint, the Title IX Coordinator will adhere to the withdrawal so long as failing to do so would not be clearly unreasonable in light of the circumstances known.

#### **K. Dismissal of Formal Complaint**

1. Upon receipt of a formal complaint, PGCPS will respond to any immediate health or safety concerns raised. The Title IX Coordinator will then conduct





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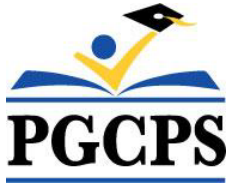
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an initial assessment for the sole purpose of determining whether the alleged conduct, if substantiated, would constitute prohibited conduct under the Board policy and this administrative procedure.

2. If the conduct alleged in the formal complaint would not constitute discrimination or harassment on the basis of sex even if proved, did not occur in PGCPS's education program or activity, or did not occur against a person in the United States, then the Title IX Coordinator/designee shall dismiss the formal complaint with regard to that conduct for purposes of discrimination or harassment on the basis of sex under Title IX. Such a dismissal does not preclude action under another provision of the Code of Student Conduct or PGCPS policies or administrative procedures related to employee discipline.
3. Additionally, the Title IX Coordinator/designee may dismiss the formal complaint or any allegations therein, if at any time during the investigation:
  - a. A Complainant withdraws the complaint in writing to the Title IX Coordinator;
  - b. The Respondent is no longer affiliated with PGCPS; or
  - c. Specific circumstances prevent PGCPS from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
4. Upon a dismissal, the Title IX Coordinator/designee will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

#### **L. Appeals**

1. Reviewable Decisions – Parties may seek review of the following:
  - a. The dismissal of a formal complaint or any allegations therein; or
  - b. A final determination regarding responsibility following the investigation of a formal complaint.
2. Basis for Review – Appeals are limited to the following grounds:
  - a. Procedural irregularity that affected the outcome of the matter;



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- 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; or
- 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 individual Complainant or Respondent that affected the outcome of the matter.

#### 3. Notice of Appeal

The decision may be appealed by petitioning the Title IX Coordinator. Any party who files an appeal must do so in writing to the Title IX Coordinator within three (3) business days of receiving the written determination regarding responsibility. The petition must state whether the appealing party challenges the finding, the remedies imposed, or both. The party appealing a decision must state all relevant bases for review simultaneously. Any basis not raised in the initial appeal is waived. Upon receipt of an appeal by either party, a notice of appeal will be provided to both parties by the Title IX Coordinator/designee who will review and conduct the appeal.

#### 4. Appeal Responses

The Title IX Coordinator will share the filed appeal with the other party. If the opposing party wishes to file a response, the response must be received by the Title IX Coordinator/designee no later than five (5) business days following receipt of the appeal. If additional time is needed, prior to the expiration of the five-day deadline, the Title IX Coordinator may grant an extension of one (1) business day upon request.

#### 5. Status While Appeal is Pending Review

All remedies imposed by PGCPS will be in effect during the appeal. A request may be made to the Title IX Coordinator for special consideration in exigent circumstances, but the presumptive stance of PGCPS is that the remedies will stand. Graduation, field trips, extracurricular activities, internships/externships, etc. do not in and of themselves constitute exigent circumstances. Employees and students shall not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to PGCPS or of privileges, all reasonable attempts will be made to restore the student or staff member to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.



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### 6. Process for Review

All appeals and responses are forwarded to the appellate member for initial review to determine if the appeal states an appropriate basis for review and is timely. The original finding and sanction will stand if the appeal is not timely or does not meet the criteria of one of the above bases for appeal, and the decision is final. If the appeal is timely and presents an appropriate basis for review, the appellate member will proceed with a substantive review of the appeal.

### 7. Appellant's Burden

The party requesting appellate review must show error in the original finding or sanction. The finding and sanction are presumed to have been decided reasonably and appropriately.

### 8. New Evidence

If the appellate member determines that new evidence should be considered, the appellate member will reconsider in light of the new evidence only. The appellate member's reconsideration of new evidence cannot be appealed.

### 9. Curable Procedural Error

If the appellate member determines that a material procedural error occurred, the appellate member will review to cure the error. The results of this second review with the error cured cannot be appealed.

### 10. Incurable Procedural Error

In rare cases, where the procedural error cannot be cured (as in cases of bias), the appellate member may order a new review of the complaint with a new Decision Maker. The results of the new Decision Maker's review can be appealed, once, in accordance with the three applicable bases for appeals.

### 11. Appeal Remedies

At the conclusion of an appeal, if the appellate member determines that the remedies or disciplinary sanctions imposed are disproportionate to the severity of the violation, the appellate member may increase, decrease or otherwise modify the remedies or disciplinary sanctions.



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### 12. Appeal Additional Considerations

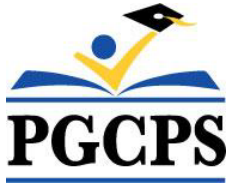
- a. All parties will be timely informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision.
- b. An appeal is not intended to be a full rehearing of the formal complaint. Appeals are confined to a review of the written documentation or record of the original decision-making process and pertinent documentation regarding the grounds for appeal.
- c. An appeal is not an opportunity for the appellate member to substitute his or her judgment for the Title IX Coordinator/designee merely because the appellate member disagrees with the finding or sanction. Appeal decisions are to be deferential to the Decision Maker(s), making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so.
- d. Remedies imposed are implemented immediately unless the appellate member or Title IX Coordinator stays their implementation in extraordinary circumstances, pending the outcome of the appeal.

### 13. Appeal Final Determination

The appellate member will render a written decision describing the result of the appeal and the rationale for the result simultaneously to all parties within 14 business days from receipt of the appeal. Additional time to render the appeal decision is allowed for good cause, but not to exceed 15 business days. The appellate member's decision to deny an appeal is final.

### M. Administrative Leave and Emergency Removal

1. PGCPS may choose to remove a volunteer or place an employee Respondent on administrative leave during the pendency of an investigation without the completion of an individualized risk and safety analysis. An individualized safety and risk analysis is not required for removal of an employee or volunteer.
2. The school principal, Behavior Threat Assessment team, and Title IX Coordinator/designee may complete an individualized safety and risk analysis to remove a student Respondent, on an emergency basis, from PGCPS's education program or activity. To justify removal, PGCPS must



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determine that an immediate threat to the physical health or safety of any student or other individual exists, arising from the same allegations. The student Respondent (or their parent/guardian if the student is a minor) must be provided with notice and an opportunity to challenge the decision immediately following the removal.

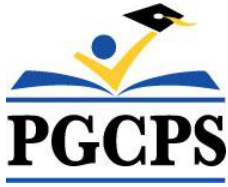
3. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, or any collective bargaining agreement then in effect.

### **N. Reprisal/Retaliation**

1. There will be no retaliation or adverse action against any individual for reporting an incident, participating in, or cooperating with an investigation of an alleged incident. Appropriate action will be taken against any student or employee who retaliates against any person who reports an incident, participates in, or cooperates with its investigation. Retaliating includes, but is not limited to, any form of intimidation, reprisal, or harassment.
2. Intimidation, threats, coercion, or discrimination, including charges against an individual for employee or student code of conduct violations that do not involve sex or gender-based discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex or gender-based discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by this administrative procedure, constitutes retaliation.

### **O. Confidentiality**

1. Confidentiality shall be maintained throughout the investigation to the extent practical and appropriate, except as may be permitted by FERPA or as required by law, or to carry out the purposes of 34 CFR Part 106. Any formal complaint of alleged discrimination or harassment on the basis of sex reported to the Title IX Coordinator/designee will be disclosed to the Respondent and investigated as appropriate.
2. Any notifications to other parties will be made only to ensure that services are provided to the Complainant, Respondent, and to protect the Complainant from further or sustained harassment. PGCPS will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair PGCPS's ability to provide the supportive measures. The Title IX



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Coordinator/designee conducting the investigation will be responsible for making determinations about confidentiality.

### P. Alternative Formal Complaint Options

1. These internal procedures do not deny the right of any individual to pursue other avenues of recourse, which may include filing charges with any of the external agencies noted below.
  - a. **U.S. Department of Education  
Office for Civil Rights**  
Lyndon Baines Johnson Department of Education Building  
Address: 400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Telephone: 800-421-3481  
TTY: 800-877-8339  
Fax: 202-245-8392  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Website: <https://ocrcas.ed.gov/contact-ocr>
  - b. **U.S. Equal Employment Opportunity Commission**  
Baltimore Field Office, City Crescent Building  
10 S. Howard Street, Third Floor  
Baltimore, MD 21201  
Telephone 1-800-669-4000  
Direct: 410-801-6685  
TTY: 1-800-669-6820  
Fax: 443-992-7889  
Email: [BFOContact@eeoc.gov](mailto:BFOContact@eeoc.gov)
2. The timeframes for filing with these agencies may vary. Where a complaint is filed with a court of competent jurisdiction, the Equity Assurance Office shall transfer the matter to the PGCPS Office of General Counsel.

### VI. MONITORING AND COMPLIANCE:

- A. All PGCPS staff shall be encouraged to complete annual training on the prevention of discrimination and harassment on the basis of sex. Staff completion rates may be tracked under the SafeSchools program.
- B. Principals, department and office managers shall review a copy of this administrative procedure with staff at least once a year and maintain for three



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(3) years a list of the date, time and attendees when the administrative procedure is reviewed.

- C. The Office of Equity Assurance shall provide an annual report by the end of the school year to the Superintendent and Chief Human Resources Officer on the number of Administrative Procedure 0104 reports received; the number of reports resolved; trends or patterns among the reports, if any; and recommendations on policy, procedure or practice changes to better address discrimination and/or harassment, if any.

### **VII. RELATED POLICIES AND PROCEDURES:**

- Board Policy 0104 – Title IX
- Administrative Procedure 4170 – Discrimination and Harassment
- Administrative Procedure 5119.3 – Educational Programs – Services for Pregnant and Parenting Students
- Administrative Procedure 5145 – Reporting Suspected Child Abuse and Neglect
- Administrative Procedure 10101 – Code of Student Conduct
- Employee Code of Conduct

### **VIII. LEGAL REFERENCE:**

- Title IX of the Education Amendments of 1972
- Regulations of Title IX Educational Amendments of 1972, 34 C.F.R. Part 106

- IX. MAINTENANCE AND UPDATE OF THESE PROCEDURES:** The Office of Equity Assurance is responsible for the maintenance and updating of this administrative procedure.

- X. CANCELLATIONS AND SUPERSEDURES:** Not applicable.

- XI. EFFECTIVE DATE:** July 1, 2023

Attachment: AP 0104 Formal Complaint form