

TITLE IX GRIEVANCE COMPLAINT PROCEDURES

The School's Grievance Complaint Procedures is followed when processing all Formal Complaints of discrimination based on sex as defined herein, or retaliation for making complaints about sex discrimination in violation of Title IX. Every effort to ensure impartiality and non-biased decision making has been employed when appointing those individuals who will implement these Procedures. If at any time a participant believes an administrator of this procedure cannot be impartial, he/she should immediately notify the Title IX Coordinator or the School's Head Administrator.

NOTE: Students and employees may address alleged violations of other School policies including the School's anti-bullying and anti-harassment/discrimination rules, using those procedures as described in the School's handbooks or related procedures. These procedures will not be used to address complaints of discrimination or harassment based on classifications (race, ethnicity, age, physical or mental disability) This Grievance Process and these Procedures are specifically limited to address complaints of discrimination, sexual harassment and retaliation based on sex and according to Title IX of the Education Amendments of 1972.

I. PURPOSE OF THESE PROCEDURES

- These Grievance Complaint Procedures ("Procedures") are intended to implement the requirements of 34 CFR Part 106 and apply only to complaints raised to address discrimination prohibited by Title IX.
- These Procedures provide students and employees a process to bring formal grievance complaints about conduct that may constitute sex discrimination as defined in these Procedures and to ensure that all parties to a complaint are given fair, even-handed opportunities to present their side of the case before a final determination is reached and before disciplinary actions are imposed, except in emergency situations.

II. DEFINITIONS

- A. Complainant – means the individual who is alleged to be the victim of conduct that could be sexual harassment, discrimination or retaliation for complaining of sexual harassment or sex discrimination as meant by Title IX.
- B. Formal Complaint – is the document submitted by the Complainant or signed by the Title IX Coordinator alleging sexual harassment, discrimination or retaliation against a Respondent and requesting that the School investigate the stated allegations. If the Formal Complaint is signed by the Title IX Coordinator, the Coordinator does not become the Complainant, nor a party to the Grievance Process. The Title IX Coordinator may submit a Formal Complaint even if the Complainant does not wish to do so on his/her own behalf. If the Title IX Coordinator files the Formal Complaint, he/she must follow the processes stated herein. Additionally, a parent or legal guardian may act on behalf of a Complainant including signing and filing a Formal Complaint.
- C. Impartiality of administrators – Participants in the Grievance Process, to the greatest extent possible, are assured that the Title IX Coordinator, Investigator, Decision Maker and Appeal Officer as the terms are used in this Procedure shall not have a conflict of interest or bias for or against the Complainant or Respondent, and shall have received appropriate training for their respective roles in this process.
- D. Respondent – is the individual against whom the allegations of the Formal Complaint are made. A parent or legal guardian may act on behalf of the Respondent as a party to a Formal Complaint

- E. Sexual Discrimination – Excluding a person from participation in, denying the person the benefit of, or subjecting a person to unequal treatment under any academic, extracurricular, occupational training or other education program or activity provided by the School based on sex, e.g. disproportionate funding for athletic programs. Sexual Discrimination includes Sexual Harassment as defined in paragraph F. For purposes of these Procedures, “sexual discrimination” shall include “sexual harassment.”
- F. Sexual Harassment – A form of sexual discrimination recently defined by the U.S. Department of Education as conduct based on sex that satisfies one or more of the following:
 - 1. An employee who conditions the provision of assistance, benefits, or services offered by a School program or activity or unwelcome sexual conduct “quid pro quo” (e.g. sexual favors in exchange for good grades).
 - 2. Unwelcome conduct that a reasonable person would consider so severe, pervasive and objectively offensive that it denies a person the ability to access her or his educational program or activity; or
 - 3. “Sexual assault,” “dating violence,” “domestic violence,” or “stalking,” each as defined by federal law and collectively referred to in these Procedures as “sexual violence.”
- G. Education Program or Activity – An education program or activity of this School includes all locations, events, or circumstances where the School has the authority to exercise substantial control over both individuals implicated in a complaint of sexual harassment. Title IX applies to all School’s programs or activities whether such programs/activities are held on or off campus, but not outside the United States. Offending conduct covered by these Procedures can occur by e-mail, over the internet, or other technologies, such as social media, if the School has the requisite authority to control the students’ conduct on these technologies.
- H. Title IX Coordinator – an employee of the School who is *duly authorized* to coordinate the School’s efforts to enforce the provisions of Title IX.

III. TITLE IX COORDINATORS’ CONTACT INFORMATION Albuquerque School of Excellence

- 1. Title IX Coordinator
 - a. Name of Title IX Coordinator
 - b. Title (e.g. School Director, Title IX Coordinator)
 - c. Email address
 - d. Phone number(s)
 - e. School physical and mailing address
 - f. [If filing online report is available, include link]
- 2. Alternative contact
 - a. Name
 - b. Title
 - c. Email address
 - d. Phone numbers(s)

IV. WHO MAY REPORT A COMPLAINT?

- A. Any employee who believes a student has been the subject of sexual discrimination and/or retaliation by a student, employee, or third person (e.g. contractor, visitor, etc.) or who has reason to believe that said conduct has occurred, **must contact** the Title IX Coordinator/s to initiate the filing of a complaint. **This report is in addition to any mandatory obligation to report child abuse or neglect.**
- B. Students are not required to file a Formal Complaint on their own behalf but are encouraged to do so.
- C. Any other person may report sex discrimination whether he/she is the alleged victim of the purported illegal conduct using the methods described in this Procedure.

- D. If Complainant is unwilling or unable to submit a Formal Complaint, the Title IX Coordinator or Alternate may ask for details of the incident in an oral interview. If the Complainant is a student with disabilities, the Title IX Coordinator shall review the reporting student's IEP or 504 Plan to determine the specific accommodations that might be necessary to aid the student in filing a Formal Complaint and/or participating in the Grievance Process.
- E. The School will promptly notify the parents of the Complainant and the Respondent of a complaint alleging sexual discrimination, unless the student is over eighteen (18).

V. GRIEVANCE COMPLAINT

- A. The Title IX Coordinator, upon learning of a complaint of sexual discrimination, sexual harassment or retaliation, shall contact the Complainant and explain the process for filing a Formal Complaint and of the availability of Support Measures as described in Section VI.
- B. The School has a Grievance Complaint form that may be obtained from the Title IX Coordinator and which is posted at <https://www.abqse.org/> However, a complaint may be made orally or provided in a writing that contains the following information:
 - a. Name, address, telephone number, email address of Complainant
 - b. Name of person(s) directly responsible for the alleged discrimination or retaliation
 - c. Date(s), time(s), and places of alleged discrimination or retaliation
 - d. Nature of the alleged violation(s); i.e. discrimination, harassment, retaliation
 - e. Detailed description of the specific conduct that is the basis of the alleged violation(s)
 - f. Copies of any documents or items related to the alleged violation(s)
 - g. Names and contact information for witnesses
 - h. Any other important information
- C. If the Complainant does not wish to sign and file a Formal Complaint, the Title IX Coordinator may sign a Formal Complaint, which triggers the Procedures stated herein, even over the objections of the Complainant. The Title IX Coordinator shall keep the Complainant informed of the process.
- D. A Formal Complaint can be submitted in person, by mail, or by electronic mail by using the contact information stated in Section III.

VI. INTERIM SUPPORT MEASURES DURING PROCESS

- A. Upon notice of a complaint, even if a Formal Complaint is not filed, the Title IX Coordinator must promptly contact the Complainant to discuss the availability of Supportive Measures as described herein. The Title IX Coordinator shall consider the Complainant's wishes with respect to Supportive Measures. Supportive Measures shall remain confidential to the extent possible for the School to successfully implement the measure.
- B. The Title IX Coordinator will make sure the Complainant is aware of his/her Title IX rights and the right of the Complainant to report a crime to law enforcement.
- C. Once a Formal Complaint is filed, the Title IX Coordinator will take steps to ensure that both the Complainant and Respondent continue to have equal access to education programs including by providing Support Measures before for the Investigation is completed and the Written Decision is issued.
- D. Supportive Measures means non-disciplinary, non-punitive individualized services provided by the School before or after filing of a Formal Complaint, or even where no complaint has been filed. These measures are designed to preserve both Complainant's and Respondent's equal access to their education program or activity. Measures will be designed to protect the safety of all parties, the School's educational environment and to deter sexual harassment or discrimination.

- E. Supportive Measures may include steps such as counseling, extending deadlines or making other course-related adjustments, modifications of work or class schedules, on-campus escort services, mutual restrictions on contact between the parties, leaves of absences (employees), increased security and monitoring, or other measures as appropriate and reasonably available, with no charge to the Complainant or Respondent.
- F. Interim measures afforded will depend on the situation. The Title IX Coordinator shall take into consideration: the specific needs expressed by the Complainant; the age of the students involved; the severity or pervasiveness of the alleged conduct; any continuing effects on the Complainant; whether the Complainant and Respondent share classes, transportation, or extra-curricular activities; or whether there are judicial orders in place to protect the Complainant.
- G. A Respondent shall not be disciplined or have punitive measures imposed prior to the outcome of the Investigation and Written Decision.
- H. Emergency Removal. Respondent may be removed from the School or School activity immediately, provided that the School conducts an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of any student, not just the Complainant, or other individual arising from the allegations of sexual harassment, discrimination or retaliation, justifies removal. If removal is warranted, the Respondent shall be afforded the opportunity to challenge the decision immediately following the removal. The extent of the challenge afforded will depend on the duration of the removal deemed warranted. An emergency removal cannot modify any rights a student may have under his/her IEP or 504 Plan.
- I. If the Respondent is an employee, he/she may be placed on administrative leave with pay during the pendency of the Grievance Process based on the allegations of the Formal Complaint.

VII. FORMAL COMPLAINT PROCESS

- A. Timelines and due dates.
 - 1. A Formal Complaint under this Procedure should be filed as soon as possible but not later than ninety (90) days after the incident or last incident giving rise to the allegations. Failure to file a Formal Complaint within these timelines may result in dismissal of the Formal Complaint. Dismissal, however, shall not preclude an individual from pursuing his/her complaint through external enforcement agencies. *See Section XVI below.*
 - 2. The Title IX Coordinator and other administrators of this procedure will make every reasonable attempt to adhere to the time limits applicable to each stage of the process. Requests by the parties for extension of time should be made to the Title IX Coordinator who will decide whether there is good cause for an extension under the circumstances.
- B. Notice of Formal Complaint. Upon receipt of a Formal Complaint, the School shall provide a written notice that contains the following information to the Complainant and Respondent:
 - 1. A copy of these Grievance Procedures.
 - 2. A statement of allegations of the Formal Complaint with sufficient details for the Respondent to prepare a response including, the name of the Complainant and other individuals involved in the incident (if known), the conduct allegedly constituting sexual discrimination, sexual harassment or retaliation, and the date and location of the incident. The Respondent shall be notified of any amendments to the allegations during the Investigation and a fair opportunity to respond.
 - 3. A statement that the Respondent is presumed not to be responsible for the alleged conduct and that a determination of responsibility shall not be made until the Grievance Process is completed including any final decision on appeal.
 - 4. Inform the parties that they may have a representative of their choice, who may be, but is not required to be an attorney. If represented by an attorney, the attorney's name and

contact information must be provided to the Title IX Coordinator within five (5) business days of the notice of the complaint or no later than three (3) days prior to any interview or meeting on behalf of the represented party.

5. The right to inspect and review evidence presented to the Investigator.
6. An explanation that an Informal Resolution Process is available, but only if both parties agree in writing to the process as described in these Procedures.
7. A statement that the making of false statements or knowingly submitting false information during the Grievance Process may result in closure of the Formal Complaint as described in Section XI, or greater weight given to evidence presented by the other party during the Investigation and/or the final determination process.

C. Confidentiality.

1. Limitations. The School shall maintain confidentiality to the extent possible. The School cannot assure complete confidentiality but will treat sensitive information as not to be shared with others except in limited circumstances. Exemptions may include but are not limited to the following examples: information required by law to be reported; information imparted to others in supervisory positions to further an Investigation or to stop a discriminatory or harassing practice; information given to the Respondent that is necessary for Respondent to have a fair opportunity to provide a response to the allegations of the Formal Complaint.
2. Considerations before Disclosure. The School will evaluate a confidentiality request in the context of whether it can maintain a safe and nondiscriminatory environment for all students, and will weigh the request against other factors it deems relevant, including without limitation:
 - a. The Complainant's age;
 - b. Circumstances that suggest there is an increased risk of future acts of harassment and/or sexual violence under similar circumstances; and
 - c. Whether the School possesses other means to obtain relevant evidence (e.g. security cameras or personnel, physical evidence).
3. All parties to a Formal Complaint under this Procedure, including Complainant, Respondent, and witnesses, are cautioned to not divulge or publicize the nature of the proceedings or the identity of those involved outside the scope of the Investigation.

D. Formal Investigation Process

1. The School, through its Investigator, shall be responsible for gathering evidence sufficient to reach a determination. The burden of supporting the final determination is on the School, not the Complainant or the Respondent. The School shall establish a violation of Title IX by a preponderance of the evidence obtained through Investigation Process.
2. The parties will be provided the opportunity to present witnesses and documents to support their positions within the timeframes set forth by the Investigator.
3. The Investigation shall be completed within thirty (30) calendar days unless scheduling conflicts or other circumstances necessitate a delay as approved by the Title IX Coordinator.
4. The parties will be provided no less than three (3) business days' notice of the time, date, location, participants and purpose of all meetings, interviews, or other meetings.
5. After the Investigator has completed the investigation, and prior to completing the Investigation Report, the Investigator shall send each party and their representatives, if any, the evidence the Investigator has collected and which is subject to inspection (and not otherwise confidential) by email or print copy. Each party shall have ten (10) business days to prepare a response to the evidence, which the Investigator shall consider before completing the Investigation Report.

6. The Investigator shall issue a written Investigation Report summarizing the information collected during the Investigation and provided by the parties within ten (10) business days from the date the Responses are due and provide a copy simultaneously by email to the parties and their representatives, if any.
 7. Before the Decision Maker renders a decision and after receipt of the Investigation Report, each party shall have five (5) calendar days to submit written questions to the Decision Maker that any party wants asked of any party or witness. The Decision Maker shall provide each party with answers within ten (10) business days. Each party shall have three (3) calendar days to submit any follow up questions. The Decision Maker must provide a reason for not responding to questions presented by the parties.
- E. Decision Maker's Written Determination
1. The Decision Maker, who shall not be the Title IX Coordinator or the Investigator and shall render a Written Determination within thirty (30) days from the date of the Investigation Report.
 2. The Written Determination shall include:
 - a. Identification of the allegations that potentially constitute sexual discrimination.
 - b. Procedural history from the date the Formal Complaint was received by the Title IX Coordinator through the date of the Written Determination, including notices to parties, interviews with parties and witnesses site visits, methods used to gather other evidence and meetings held.
 - c. Findings of facts supporting the determination and if a violation is found that it is supported by the preponderance of the evidence.
 - d. Conclusions regarding the application of the School's code of conduct to the facts, if any.
 - e. Statement of and rationale for determination as to each allegation, any finding of responsibility, any discipline imposed and whether any actions taken are designed to ensure that equal access to educational opportunities are preserved or restored on behalf of Complainant.
 - f. Statement of the discipline to be imposed on Respondent and, if the discipline includes a long-term suspension or expulsion, Respondent's rights to a due process hearing pursuant to 6.11.2 NMAC.
 - g. Statement of the appeal rights with deadline for filing an appeal.
 3. A copy of the Written Determination shall be provided to the Complainant and Respondent, and their representatives, if any, simultaneously via email.

VIII. INFORMAL RESOLUTION PROCESS

- A. After the Formal Complaint has been filed, and at any time prior to issuance of the Investigator's Report, the parties may agree in writing to engage in an informal resolution process, unless the Formal Complaint alleges sexual violence, or when the complaint is against an employee of the School, which must be investigated and finally processed as described above.
- B. An Informal Resolution Process may include:
 - Informal inquiry and discussion
 - Mediation
 - Or other dispute resolution processes agreed to by the parties
- C. Any evidence or information shared during the Informal Resolution Process may be used during the Formal Complaint Investigation if either party terminates the Informal Resolution Process prior to reaching a final agreement.
- D. Either party may withdraw their consent to the Information Resolution Process at any time and proceed with the Formal Complaint procedures described herein. The party choosing to end the

Information Process must provide written notice to the other party and to the Title IX Coordinator.

- E. If a resolution is reached it shall be documented, and signed by both parties, their representatives and the Title IX Coordinator. A resolution through this process ends the Formal Complaint process, which may not be resubmitted or appealed.

IX. POTENTIAL DISCIPLINARY ACTIONS

- A. Employees and students may be disciplined, but only if it is determined through these Procedures that discriminatory action, treatment, harassment or retaliation for complaining has occurred in violation of Title IX or School policies. The Title IX Coordinator shall refer imposition of discipline to the School's Head Administrator.
- B. Discipline may include counseling, restrictions on contact between the parties, modifications of work or class schedules, other course-related adjustments, suspension, expulsion, restorative justice participation, or other forms of discipline deemed appropriate under the School's discipline policies. If a student is expelled or long term suspended, he/she shall be entitled to a due process hearing as afforded pursuant to 6.11.2 NMAC.
- C. Employees will be placed on administrative leave with pay pending the outcome of the Investigation. If the Decision Maker determines there has been a violation of Title IX policies, the employee will be disciplined up to termination or discharge from employment in accordance with the requirements of the New Mexico School Personnel Act.

X. APPEALS

- A. Respondent. If there is a finding that Respondent's conduct resulted in sexual discrimination as the term is defined by Title IX and these Procedures, and disciplinary action is imposed, the Respondent may request an appeal within five (5) calendar days of the Written Determination.
- B. Complainant. If Complainant believes that a finding that the Respondent's conduct did not constitute sex discrimination as the term is defined by Title IX was wrong or that the discipline was inadequate, the Complainant may request an appeal within five (5) calendar days of the date Written Determination.
- C. Request for Appeal. A request for appeal must be in writing, signed by the party initiating the appeal and state why that party disagrees with the Written Determination. The request for appeal must be submitted to the Title IX Coordinator who will provide a copy indicating receipt to all parties, and notifying the parties that each shall have the option to submit a written statement in support or opposition to the request for appeal. The statement must be submitted within five (5) calendar days of receipt from this notice and delivered to the Title IX Coordinator.
- D. The Appeal Officer who may not be the Title IX Coordinator, Investigator or the Decision Maker, will review the request for appeal, the investigation documents, statements in response to the request for appeal and may interview the Complainant and Respondent if necessary, to make a determination. An Appeal Determination will be made within fifteen (15) working days from the date the request for appeal was made.
- E. The Appeal Determination shall be a written decision and include the Appeal Officer's rationale for the decision.
- F. The Appeal Determination shall be sent to both parties simultaneously and the Appeal Officer's decision is final at the School level. *See Section XVI below for further redress.*

XI. DISMISSAL OF FORMAL COMPLAINT

- A. A Formal Complaint may be dismissed and not processed if:
 - 1. The Complainant, even after contact and follow up with the Investigator, fails to describe in sufficient detail the conduct that is the basis of the complaint and it is determined that the complaint does not provide sufficient facts to support a potential Title IX violation.

2. The conduct alleged in the Formal Complaint does not state a claim, even if true under Title IX.
 3. The Complainant refuses to cooperate with the Investigation.
- B. The School may dismiss the Formal Complaint, or any allegations therein, if at any time during the Investigation the Complainant notifies the Title IX Coordinator in writing that the Complainant wants to withdraw the Formal Complaint, the Respondent is no longer enrolled or employed by the School, or the School is prevented from gathering evidence to make a determination.
 - C. The parties to the Formal Complaint will be promptly notified in writing with an explanation of the School's decision to dismiss the Complaint. This decision may be appealed by the Complainant within seven (7) calendar days of notice of a decision not to proceed. The request for appeal must include a written explanation for why the Complainant believes the decision not to process the Formal Complaint was wrong. An Appeal officer will review the decision to not proceed as well as the Complainant's written appeal statement and render a decision within seven (7) calendar days.
 - D. An Appeal Officer's decision to uphold the decision not to proceed with investigating the Complaint shall be final at the School level.
 - E. If the Appeal Officer overturns the decision not to proceed, the Formal Complaint will be sent back for investigation according to the Procedures described above.

XII. ABUSE OF GRIEVANCE PROCESS

If the preponderance of the evidence supports a finding that the Complainant submitted a false or misleading Formal Complaint alleging harassment, discrimination or retaliation, the Formal Complaint will be dismissed, the student or employee who submitted the complaint will be recommended for discipline according to School policies.

XIII. RETALIATION

- A. Students, employees or parents who make a complaint of discrimination in good faith, shall be free from retaliation, coercion, and reprisal in seeking resolution to a complaint, whether filed as a Formal Complaint under this policy or otherwise. Prohibition against retaliation applies to witnesses and others who cooperate in the Grievance Process at any level.
- B. Complainants, Respondents and others participating in the Grievance Process are hereby notified that retaliation is a separate violation distinct from the underlying discrimination or harassment allegation. Claims of retaliation, submitted in good faith and in writing to the Title IX Coordinator, shall be investigated pursuant to these Procedures. Individuals who engage in retaliation shall be subject to discipline, regardless of whether there has been a finding of cause for the underlying complaint.

XIV. COMPLAINTS TO LAW ENFORCEMENT/EFFECTS ON PROCESS

- A. If a person believes he or she is a victim of sexual violence, the School recommends that the incident be reported to law enforcement immediately. The School has a mandatory reporting requirement under said circumstances.
- B. The Title IX Coordinator will not postpone processing of a Formal Grievance if a criminal complaint has been filed. However, the School may be required to delay the Investigation while local law enforcement officials are gathering evidence. During any delay caused by law enforcement efforts, the Title IX Coordinator will ensure that interim Supportive Measures will be implemented, continued and revised, if necessary. The Title IX Coordinator will make every effort, contingent on receipt of timely information from law enforcement, to update the parties on the status of the investigation.

XV. MAINTENANCE OF RECORDS

- A. Records relating to a Formal Complaint pursuant to this Procedure must be maintained by the School for seven (7) years.
- B. Records to be preserved include all documents, audio or audio-visual recordings, or transcripts that were received, produced or kept by the School or its designees related to a Formal Complaint process, any Informal Complaint Resolution process, all interim supportive measures provided, or documentation of why such measures were not provided, evidence to support that the School's response in this matter was not deliberately indifferent and that measures were taken to preserve or restore equal access to the educational program or activity.
- C. All material used to train Title IX Coordinators, Investigators, Decision Makers and any person who facilitates an informal resolution process, must be retained for seven (7) years.

XVI. REPORTS TO STATE AND FEDERAL AGENCIES/ADDITIONAL INFORMATION

Individuals may pursue claims with the agencies listed below as well as obtain additional information about their rights and the obligations of the School.

- A. Employment discrimination complaints may be filed with the New Mexico Human Rights Bureau or the United States Equal Opportunity Commission.

New Mexico Human Rights Division
1595 Pacheco St., Suite 103
Santa Fe, NM 87505
<https://www.dws.state.nm.us/Filing-a-Charge-of-Discrimination>

U.S. Equal Employment Opportunity Commission
505 Marquette Avenue, NW
Albuquerque, NM 87102
<https://www.eeoc.gov/filing-charge-discrimination>

[Las Cruces – EL Paso Office]
100 Stanton Towers
100 N. Stanton Street, Suite 600
El Paso, TX 79901-1433

- B. Students may file discrimination complaints through the United States Department of Education – Office for Civil Rights <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html> .

Denver Office
Office for Civil Rights
U.S. Department of Education
Cesar E. Chavez Memorial Building
1244 Speer Boulevard, Suite 310
Denver, CO 80204-3582