

Procedure - Sex Discrimination and Sex-Based Harassment of Students Prohibited

ESD 112 (ESD) is committed to providing an educational environment that is free from sex discrimination, sex-based harassment, and retaliation for engaging in any protected activity as required by Federal and State laws for all students.

This procedure sets forth the ESD's process for receiving, investigating, and resolving reports or complaints of sex discrimination and sex-based harassment as required under Policy 3205. It is designed to provide for a prompt, thorough, and equitable investigation of complaints and to take appropriate steps to resolve such situations.

This procedure was developed to meet ESD 112's obligations under Title IX and is aligned with Washington State laws and regulations. If sex discrimination is found to have occurred, the ESD will take immediate action to eliminate the discrimination, prevent its reoccurrence, and address its effects. The ESD will assess sex discrimination complaints under this procedure and may refer complaints to other compliance officers to be addressed under other ESD policies and procedures

For questions about this procedure, contact the District's Title IX Coordinator who can be reached at: <https://www.esd112.org/nondiscrimination/>

I. General Definitions

"Complainant," means a student, employee, or other person who was participating or attempting to participate in an ESD 112 education program or activity who is alleged to have been subjected to sex discrimination.

In some instances, the person who files a complaint may not be the student, employee, or other person who was alleged to have been subjected to sex discrimination. In those cases, the person who filed the complaint will be referred to as the "Complaint Requestor," and the student, employee, or person subjected to the alleged sex discrimination will be referred to as "the Complainant."

"Complaint" means an oral or written request made that can be objectively understood as a request the ESD will investigate and determine whether alleged sex discrimination occurred.

"Party" or "Parties" means a Complainant(s) or Respondent(s).

"Prohibited Conduct" means legally prohibited sex discrimination and sex-based harassment. Specific prohibited conduct is defined in Section VI below.

“Remedies” means appropriate measures provided after the ESD determines that sex discrimination occurred to restore or preserve a Complainant or any other person’s equal access to the ESD’s education program or activity.

“Respondent” means a person who is alleged to have violated the ESD’s prohibition of sex discrimination and can be a student, employee, or other third Party.

“Student with a disability” means a student who is an individual with a disability as defined in Section 504 of the Rehabilitation Act of 1973 (Section 504) or a child with a disability as defined in the Individuals with Disabilities Education Act (IDEA).

“Title IX Coordinator” means the individual named by the Superintendent to serve as the ESD’s Title IX Coordinator or the Title IX Coordinators designee.

“Written notice” means written or electronic notice in a language the Party can understand, which may require language assistance for Parties with limited English proficiency in accordance with Title VI of the Civil Rights Act. The term Parties include the parent(s)/guardian(s) of any minor student.

II. Responding to Notice or Report of Sex Discrimination

Upon receipt of notice, reports, or knowledge about alleged sex discrimination, including sex-based harassment, the ESD will take steps, as necessary, to address information that is reported to it by others to the extent that it is feasible to do so while maintaining the confidentiality of the affected student or employee.

The ESD is on notice and required to act when any employee knows, or in the exercise of reasonable care should know, about possible sex discrimination, including sex-based harassment. This includes verbal or written reports made to any employee, including anonymous complaints. Upon notice of possible sex discrimination, employees must notify the Title IX Coordinator.

The ESD will make every effort to protect Parties' privacy. However, in the event of an alleged sexual assault of a minor (under age 18) student or employee, the ESD Administrator overseeing the program that serves the alleged victim will ensure law enforcement is informed consistent with mandatory reporting requirements at RCW 26.44 and ESD Board Policy.

In the event of an alleged sexual assault, the ESD Administrator will notify the student, parent or guardian, or employee of their right to file a criminal complaint with law enforcement and a sex-based harassment complaint with the ESD. With the consent of the student or employee, or when there is a legal requirement to do so, the ESD Administrator may help a student or employee contact law enforcement.

III. Supportive Measures, Notice of Applicable Policy/Procedure and Other Considerations

Once the Title IX Coordinator has been notified of possible sex discrimination, the Title IX Coordinator will promptly contact the affected student or employee to:

- Discuss the availability of supportive measures and consider their wishes with respect to supportive measures;
- Explain the ESD's procedure and resolution options, including the informal resolution process if appropriate; and
- Provide a copy of the applicable ESD policy and procedure, including this procedure that applies to resolve formal complaints.

A. Supportive Measures

Upon notice of allegations of sex discrimination, an ESD Administrator trained on Title IX supportive measures will offer and coordinate supportive measures as appropriate for the Complainant and Respondent.

At the time that supportive measures are offered, if a complaint has not been filed, the ESD will provide written notice that the Complainant may file a complaint with the ESD at any time. The ESD Administrator will work with each Party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

If a Complainant does not want to file a complaint or engage in informal resolution options, a reported concern may be resolved by offering and providing supportive measures (only). The ESD Administrator will document any supportive measures provided and report that information to the Title IX Coordinator.

1. Providing Supportive Measures

Supportive measures are designed to protect the safety of the Parties or the ESD's educational environment. They also provide support during the informal resolution process and formal complaint process. They are designed to restore or preserve access to the ESD's education program or activity. They are offered without fee or charge to the Parties and will not unreasonably burden either Party.

Supportive measures cannot be imposed against a Respondent for punitive or disciplinary reasons.

Supportive measures are available to both Parties and may vary depending on what is reasonably available.

If either Party is a student with a disability, the Title IX Coordinator will consult, as appropriate, with an individual or office designated to provide support to students with disabilities about how to comply with Section 504 or the IDEA in the implementation of supportive measures.

For allegations other than sex-based harassment or retaliation, the ESD is not required to alter the alleged discriminatory conduct for the purpose of providing a supportive measure.

2. Privacy and Supportive Measures

To protect the Parties' privacy, the ESD will not disclose supportive measures to anyone other than the people to whom they apply, including the other Party. The ESD will disclose information to individuals who must have information to carry out the purposes of supportive measures, including to address conduct that

reasonably may constitute sex discrimination. For example, the ESD may need to tell specific staff, the other Party, or a third Party of a supportive measure to implement or document it, however, the reason why a supportive measure is being provided may not need to be disclosed. The ESD may also need to disclose information related to the supportive measure to a person who must provide consent, to a parent or guardian, to an auditor or funder to comply with a state or federal grant, or to others when Federal, State or local laws require or authorize disclosure. Information may not be shared when disclosure is prohibited by State law or Board policy.

3. ESD Modification or Termination of Supportive Measures
As appropriate, ESD may modify or terminate supportive measures at the conclusion of an informal resolution or investigation process.
4. Opportunity for Modification or Reversal of Supportive Measures
A Party may seek modifications to, or termination of, a supportive measure that is applicable to them if circumstances change materially.

If a Party wants to modify or reverse the ESD's decision to provide, deny, modify, or terminate supportive measures applicable to them, they may request an opportunity for modification or reversal. A request for modification or reversal will be reviewed by a Title IX trained Administrator who is not the same person who made the initial decision regarding the supportive measures (Supportive Measure Review Administrator). The Title IX Coordinator will provide the Parties the contact information for the Administrator that will review the request to modify or terminate the supportive measures.

B. Title IX Coordinator Determinations and Explanation of Applicable Policies

1. Who Can File Under this Procedure
The following people can make a complaint of sex-based harassment under this procedure:
 - A person who meets the definition of "Complainant" above,
 - a parent, guardian, or other authorized legal representative of the Complainant,
 - or the Title IX Coordinator

For other forms of sex discrimination that are not sex-based harassment, the following people can file a complaint under this procedure:

- A person who meets the definition of "Complainant" above,
- a parent, guardian, or other authorized legal representative of the Complainant,
- the Title IX Coordinator,
- any student or employee, or
- any other person participating or attempting to participate in a ESD education program or activity at the time of the alleged sex discrimination.

If a person filed a complaint of sex-based harassment but does not have the right to make that type of complaint, the Title IX Coordinator or designee will inform the person, in writing, that the ESD cannot proceed with an investigation. The notice will also state that the ESD will treat the complaint as a report of sex-based harassment and take steps, as necessary, to address the information to

the extent that it is feasible to do so while maintaining the confidentiality of the affected student or employee.

2. Determining What Procedure Applies

The Title IX Coordinator or designee will determine what procedure applies to complaints alleging sex discrimination and sex-based harassment.

C. Other Considerations

1. Students with Disabilities

If either Party is a student with a disability, the Title IX Coordinator will consult with one or more members, as appropriate, of the student's Section 504 or Individualized Education Program (I.E.P.) team to determine how to comply with Section 504 and IDEA requirements throughout the implementation of this procedure.

2. Discipline Prohibited Until Determination

A Respondent who is accused of sex discrimination under Title IX is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the formal complaint process. The ESD may not impose any disciplinary sanctions or other actions that are not supportive measures against the Respondent until the ESD has determined that the Respondent was responsible for the sex discrimination.

3. Emergency Removals for Alleged Sex-Based Harassment under Title IX

The ESD may remove a student Respondent from school on an emergency basis consistent with ESD 112 Board Policy and state laws for emergency expulsion *provided* that the ESD:

- Undertakes an individualized safety and risk analysis,
- Determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and
- Provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

Removal of a student Respondent in accordance with this procedure does not modify any rights of students under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, or the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq.

The ESD may place an employee Respondent on administrative leave from employment responsibilities during the formal complaint process. Such leave does not modify any rights an employee Respondent may have under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, or the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq.

IV. Informal Resolution

If a report or notice provided to the ESD alleges sex discrimination by an individual or group of individuals, the Parties may elect to participate in an informal resolution process with an Informal Resolution Facilitator trained on impartiality and the ESD's informal resolution processes. The purpose of informal resolution is to provide the Parties with an opportunity to resolve the allegations and reach a mutually acceptable resolution without an investigation and determination of responsibility under Section V.G below.

It is not necessary to pursue informal resolution before filing a complaint and requesting an investigation under Section V below. Either Party may request informal resolution at any time, including after a complaint has been filed but before a complaint determination is issued under Section V.G below.

The informal resolution process is at the discretion of the ESD's Title IX Coordinator. However, as required by Federal law, the ESD does not allow informal resolution for allegations that an employee engaged in sex-based harassment of an ESD 112 student.

Participation in the informal resolution process requires the Parties' voluntary, written consent. Before beginning the informal resolution process the Parties will receive notice that explains the process in its entirety.

A. Accepted Responsibility by the Respondent

The Respondent may accept responsibility for any or all the allegations at any point during the informal resolution process. If the Respondent indicates an intent to accept responsibility for **all** allegations that violate ESD policy, any ongoing investigation process will be paused, and the Title IX Coordinator will determine whether informal resolution is appropriate. If informal resolution is appropriate, the Informal Resolution Between the Parties process listed in IV.B below will be followed.

When the Parties and ESD cannot agree on all terms of accepted responsibility by the Respondent, the Parties can attempt informal resolution or proceed with a formal complaint.

B. Informal Resolution Between the Parties

The purpose of informal resolution between the Parties is to provide an opportunity for both Parties to reach a mutually acceptable resolution without an agreed upon finding of responsibility or an investigation and determination of responsibility under Section V.G below.

The Parties will have forty-five days to engage in the informal resolution process, unless there is a good cause for extension. If a complaint was filed, the Title IX Coordinator has discretion to determine if an investigation will be paused, limited, or continued during the informal resolution process. If the Parties agree to a resolution at the conclusion of the informal resolution process, they will not be able to initiate or resume a complaint under Section V.B. concerning the same allegations.

If either Party withdraws from the informal resolution process or the process has not concluded within forty-five calendar days without a good cause extension, then the Informal Resolution Facilitator or Title IX Coordinator will end the informal resolution process. When the informal resolution process ends without a resolution agreement between the Parties:

- If no complaint was filed, the Title IX Coordinator will provide written notice to the Parties and remind the Complainant of the right to file a formal complaint.
- If a formal complaint was filed and the Complainant has not withdrawn the entire complaint in writing, the Title IX Coordinator will provide the Parties with written notice that the complaint, in whole or part, will be investigated and a determination issued under Section V.G of this procedure.

C. Complaints of General Discrimination

The ESD will not require the waiver of the right to an investigation and adjudication of a complaint of sex discrimination as a condition of enrollment, employment, or enjoyment of any other right, nor will the ESD require the Parties to participate in an informal resolution process or to pursue an investigation or resolution of a complaint alleging discrimination that is not subject to this procedure.

If a sex discrimination complaint is not subject to this procedure the complaint will be referred to the Civil Rights Compliance Officer and processed under the ESD's policy and procedure for non-discrimination.

V. Formal Complaint Procedure

A. Basic Requirements of the ESD's Sex Discrimination Formal Complaint Procedure

1. Equitable Treatment and No Conflicts of Interest or Bias

The ESD will treat Complainants and Respondents equitably.

The ESD presumes that the Respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of the complaint procedure.

The ESD requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against Complainants or Respondents generally or individually.

2. Extension of Timeframes

The ESD's process allows for the reasonable extension of timeframes on a case-by-case basis when agreed to by the Complainant, or when exceptional circumstances related to the complaint investigation require an extension of the time limit.

3. Privacy and Personally Identifiable Information

The ESD will take reasonable steps to protect the privacy of the Parties and witnesses during the complaint process. These steps will not restrict the ability of the Parties to:

- Obtain and present evidence, including by speaking to witnesses,
- Consult with their family members or confidential resources such as medical providers, therapists, sexual assault resource centers, or others, or
- Otherwise prepare for or participate in the complaint process.

The ESD will comply with Board policies and state laws that grant students at certain ages the right to make decisions regarding the confidentiality of their personal information and records.

The ESD will not disclose personally identifiable information (PII) obtained while complying with this procedure except in the following circumstances:

- To carry out the purposes of the ESD's obligations under this procedure, including to investigate and take other actions to address conduct that reasonably may constitute sex discrimination in an ESD education program or activity,

- When the ESD has obtained prior written consent from a person with the legal right to consent to the disclosure,
- When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose PII is at issue,
- As required by State or Federal law, regulations, or the terms and conditions of a State or Federal award, including a grant award or other funding agreement, or
- To the extent such disclosures are not otherwise in conflict with State or Federal laws, when required by State or local law, such as when there is reasonable cause to believe that a child has suffered sexual abuse (RCW 26.44.030), or when permitted under FERPA, 20 U.S.C. 1232g, or its implementing regulations, 34 C.F.R. part 99.

4. Prohibition of Retaliation

The ESD, students, employees and any other person authorized by the ESD to provide any aid, benefit, or service under the ESD's education program or activity is prohibited from retaliating in response to any actions taken pursuant to this procedure. Prohibited retaliation includes student-to-student retaliation.

5. Credibility Determinations

Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

6. Relevant Evidence

The ESD will objectively evaluate all evidence that is relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence. "Relevant" means related to the allegations of sex discrimination under investigation as part of the formal complaint process. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

7. Impermissible Evidence

The following types of evidence and questions seeking that evidence are impermissible and will not be accessed or considered, except to the extent it is necessary to determine whether one of the exceptions listed below applies:

- Evidence that is protected under a privilege recognized by Federal or State law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality,
- A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness unless the ESD obtains that Party's or witness's voluntary, written consent for use in the formal complaint process, and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's

consent to the alleged sex-based harassment or preclude a determination that sex-based harassment occurred.

Impermissible evidence will not be disclosed and will not otherwise be used, regardless of whether it is relevant.

B. Formal Complaints

If the ESD receives a complaint under this procedure, the Title IX Coordinator will ensure the complaint is evaluated and, if appropriate, investigated.

If the Title IX Coordinator has a conflict of interest, they will delegate their authority to participate in this process as necessary to avoid any potential conflicts of interest.

Upon receipt of a complaint, if they have not already been offered, the Title IX Coordinator will ensure supportive measures are offered to both Parties. If necessary, the Title IX Coordinator may gather additional information from the Complainant to understand the Parties involved, the conduct allegedly constituting sex discrimination, and the date and location of the alleged incident(s), if known.

C. Dismissal of a Complaint

The Title IX Coordinator may dismiss a complaint of sex discrimination if a determination is made that:

- The ESD is unable to identify the Respondent after taking reasonable steps to do so.
- The Respondent is not participating in the ESD's education program or activity and is not employed by the ESD.
- The Complainant provided voluntary, written notice that they want to withdraw any or all of the allegations in the complaint, the Title IX Coordinator declines to open a complaint, and any allegations that were not withdrawn (if any), even if proven, would not constitute sex discrimination under Title IX.
- The conduct alleged in the complaint, even if proven, would not constitute sex discrimination. Before dismissing such a complaint, reasonable efforts will be made to clarify the allegations with the Complainant.
- The complaint lacks sufficient detail to objectively understand what sex-based discriminatory acts are alleged, and when and where they occurred. Before dismissing the complaint for lack of sufficient detail, the Complainant will be provided written notice of what information is needed and that complaint will be dismissed if the information is not received within ten (10) calendar days. Such a dismissal will not prevent the Complainant from filing other complaints in the future.

Upon dismissal, the ESD will promptly provide written notice to the Complainant of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the ESD will also simultaneously notify the Respondent of the dismissal and the basis for the dismissal.

The ESD will provide the Complainant with notice of the opportunity to appeal the dismissal of a complaint within ten (10) calendar days of the dismissal

decision by submitting a written notice of appeal to the ESD Administrator trained in how to address appeals under this procedure and named in the notice of dismissal. The notice will include the basis for which an appeal can be made.

When a complaint is dismissed, the ESD will, where appropriate:

- Offer supportive measures to the Complainant,
- Offer supportive measures to the Respondent if the Respondent was notified of the allegations, and
- Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the ESD's education program or activity.

Dismissal does not preclude action under another ESD policy or procedure.

D. Dismissal Appeal Process

If the dismissal is appealed, the ESD will use the Level Two Appeal as described in Section V.H. for the appeal of the dismissal. The ESD will notify the Parties of any dismissal appeal, including notice of the allegations if notice was not previously provided to the Respondent. The notice will include procedures that will apply equitably to both Parties.

E. Notice of Allegations

The ESD will acknowledge receipt of the formal complaint by providing the following written notice to the Parties:

- A copy of the ESD's sex discrimination complaint procedure and, if appropriate, any informal resolution process available.
- Notice of the allegations of sex discrimination available at the time of the notice with sufficient information to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s), if known.
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of the evidence and, upon request, an equal opportunity to access such evidence.
- Notice that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility for alleged sex discrimination is made at the conclusion of the investigation process.
- Notice of the ESD's prohibition of retaliation.

The ESD may consolidate complaints of sex discrimination against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party when the allegations of sex discrimination arise out of the same facts or circumstances. However, the ESD will not consolidate complaints if consolidation violates the Family Educational Rights and Privacy Act (FERPA) and the ESD has not obtained prior written consent from the parents or eligible students to the disclosure of their education records. This determination will be made on a case-by-case basis.

If, during an investigation, the ESD decides to investigate additional allegations of sex discrimination by the Respondent toward the Complainant that are not included in the notice provided or that are included in a complaint that is consolidated, the ESD will notify the Parties of the additional allegations.

F. Investigation:

The ESD will provide for adequate, reliable, and impartial investigation of a complaint. The investigator will be trained, impartial, and without a conflict of interest or bias for or against either Party.

1. Time for Investigation

A decision based on a prompt, thorough, and effective investigation will be issued within 30 days of the complaint, unless the Parties agree or there are exceptional circumstances related to the complaint that warrant an extension. In the event an extension is needed, the ESD will provide written notice to the Parties of the reason for the extension and the anticipated response date within the following thirty days (and for every thirty days after that) until a decision is issued.

2. Standard of Proof

The ESD adopts preponderance of the evidence as the standard of proof it will use in reaching decisions regarding complaints. The ESD will ensure an investigation that gathers sufficient evidence to determine whether sex discrimination occurred is completed.

3. Investigation Requirements

The Title IX Coordinator may conduct the investigation or may appoint or retain a properly trained person to conduct the investigation. The investigation of a sex discrimination complaint will:

- Include a prompt and thorough investigation into the allegations in the Complaint.
- Ensure that the ESD bears the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility.
- Provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible.
- Include a review of all evidence gathered through the investigation and a determination of what evidence is relevant and what evidence is impermissible regardless of relevance.
- Not restrict the ability of either Party to discuss the allegations under investigation or to gather and present relevant evidence.
- Provide each Party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, as described in Sections V.A.6 and 7.
- Provide the Parties with the same opportunities to have others present during any formal complaint proceeding, including the opportunity to be accompanied to any related meeting or proceeding by a parent, guardian, legal representative, or other adult of their choice.

4. Witness' and Parties' Rights

Student Complainants, Respondents, and witnesses, and witnesses from outside the ESD's community will not be required to participate in investigation or resolution processes but are encouraged to cooperate with the ESD's investigations and to share what they know about a Complaint.

Employees (not including Complainant and Respondent) are required to cooperate with and participate in the ESD's investigation and resolution process.

5. Review of Evidence Prior to Determination

At least ten (10) days prior to a determination regarding responsibility, the ESD shall provide the Parties with a report that provides equal written notice as to the findings of the investigation and provides a fair summary of any relevant evidence that is directly related to the allegations raised in the complaint and obtained as part of the investigation. The notice shall inform the Parties that:

- The report findings will be provided to the decisionmaker.
- They are being given an accurate description of the evidence and, upon request, they have an equal opportunity to inspect and review relevant and not otherwise impermissible evidence.
- They have ten (10) days from receipt of the notice to review the description of the evidence, request to review the evidence, and submit a written response for the decisionmaker to consider prior to making a decision.
- Both Parties are being given an equal opportunity to ask specific, relevant questions about the evidence or identify areas where they believe further investigation is necessary.

If the Parties request to inspect and review the relevant evidence, the ESD will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through the formal complaint procedures.

Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized. However, the ESD may redact information if it has not received voluntary, written consent to disclose information that is privileged or was made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional made in connection with the provision of treatment to the Party.

G. Level One – Response and Decision

At the conclusion of the investigation and within thirty (30) calendar days of receipt of the complaint (or any approved extensions), the Superintendent or the Superintendent's designee will issue a written decision regarding the alleged sex discrimination.

Prior to issuing a decision, the Superintendent will objectively review all evidence gathered in the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

The Superintendent will not be the investigator and is not bound by the investigator's findings or recommendation. The Superintendent is responsible for determining if sex discrimination occurred and for any discipline or remedies. The Superintendent may question Parties and witnesses to adequately assess a Party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination prior to issuing the decision.

The decision will be issued within 30 days unless otherwise agreed to by the Complainant or unless exceptional circumstances related to the complaint require an extension of the time limit. In the event an extension is needed, the ESD will provide written notice to the Parties and the anticipated response date.

1. Determination of Whether Sex Discrimination Occurred

After an investigation and evaluation of all relevant and not otherwise impermissible evidence, the Superintendent will use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. If the Superintendent is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the Superintendent will not determine that sex discrimination occurred.

Written notice of the Superintendent's decision will be issued to the Parties at the same time and will include:

- The allegations potentially constituting sex discrimination,
- Findings supporting the decision,
- Application of the ESD's policy prohibiting sex discrimination to the facts and a statement of conclusion as to whether a preponderance of the evidence substantiated that the Complainant was subjected to sex discrimination,
- If sex discrimination was substantiated, the decision must also include a determination regarding responsibility, any disciplinary or other sanctions imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the education program or activity will be provided to the Complainant,
- Any corrective measures the Superintendent deems necessary, including assurance that the ESD will take steps to prevent recurrence and remedy effects of the discrimination on the Complainant and others, if appropriate, and
- Notice of the Parties' right to appeal to the Board, or the Board's authorized appeal decisionmaker, and the necessary filing information.

The ESD will also send a copy of the Superintendent's decision to the Office of the Superintendent of Public Instruction (OSPI) when the ESD provides notice to the Parties.

Any corrective measures deemed necessary will be instituted as quickly as possible, but in no event more than thirty (30) days after the written decision is issued, unless a student is appealing the imposition of discipline and the ESD is barred by due process considerations or a lawful order from imposing the discipline until the appeal process is concluded.

2. Disciplinary Sanctions and Remedies

Following a determination that sex-based harassment occurred, the ESD may impose disciplinary sanctions. "Disciplinary sanctions" means consequences imposed on a Respondent following a determination under the formal complaint process that the Respondent violated the ESD's sex discrimination Policy. Disciplinary sanctions against students or employees will be in accordance with ESD 112 Board Policies and applicable state laws.

The ESD may also provide remedies to restore or preserve a person's access to the ESD's education program or activity. Remedies may include but are not limited to continuing supportive measures, referrals to counseling, health services, or the Employee Assistance Program, program adjustments, education and training, permanent or temporary alteration of work arrangements, school safety escorts, climate surveys, limiting contact between Parties, and adjustments to academic deadlines or class schedules.

H. Level Two – Appeal to the Board

If a Complainant or Respondent(s) disagrees with the Superintendent's written decision, the disagreeing Party may appeal the decision to the ESD 112 Board of Directors by filing a written notice of appeal with the Superintendent within ten (10) calendar days following the date upon which the Complainant received the response.

1. Notice of Appeal and Hearing

If the complaint involves a named Respondent, the ESD will implement appeal procedures equally for both Parties and provide written notice to the other Party when an appeal is filed.

The board shall schedule a hearing to commence by the twentieth (20th) calendar day following the filing of the written notice of appeal unless otherwise agreed to by the Complainant and the Superintendent or for good cause.

2. Appeal Decisionmaker

The board's appeal will be heard by an assigned hearing officer/decision maker that is not the Superintendent or an ESD employee and will be an individual or group of individuals who are impartial and do not have any conflicts or bias for any of the Parties. The appeal hearing officer/decisionmaker will not have any conflicts of interest or bias and will be trained consistent with the requirements of federal and state law.

3. The Appeal/Hearing Process

On appeal, the Parties will be allowed a reasonable, equal opportunity to present such witnesses and testimony as the appeal hearing officer/decision maker deems relevant and material in support of or challenging the outcome of the initial determination.

Unless otherwise agreed to by the appellant(s), the hearings officer/decision maker will render a written decision within thirty (30) calendar days following the filing of the notice of appeal and provide the Complainant with a copy of the decision. The decision will be provided in a language the Complainant can understand.

The decision will include notice of the Complainant's right to appeal to the Superintendent of Public Instruction and will identify where and to whom the appeal must be filed. The ESD will send a copy of the appeal decision to the office of the Superintendent of Public Instruction.

I. Level Three - Complaint to the Superintendent of Public Instruction

If the Complainant or Respondent disagrees with the decision of the appeal hearings officer/decisionmaker, or if the ESD fails to comply with this procedure, the Complainant may file a complaint with the Superintendent of Public Instruction.

A complaint must be received by the Superintendent of Public Instruction on or before the twentieth (20) calendar day following the date upon which the Complainant received written notice of the hearing officer's/decision maker's decision unless the Superintendent of Public Instruction grants an extension for good cause.

The OSPI complaint must be in writing and include:

- A description of the specific acts, conditions, or circumstances alleged to violate applicable anti-discrimination laws,
- The Complainant's name, address and contact information,
- The ESD address and phone number,
- A copy of the initial complaint, the written decision on the complaint, the appeal and the appeal decision, and
- A proposed resolution of the complaint or relief requested.

If the allegations regard a specific student, the complaint must also include the name and address of the student or, in the case of a homeless child or youth, their contact information.

Upon receipt of a complaint, the Office of the Superintendent of Public Instruction may open an investigation, which may include conducting an independent on-site review. OSPI may also investigate additional issues related to the complaint that were not included in the initial complaint or appeal to the Superintendent or board. Following the investigation, OSPI will make an independent determination as to whether the ESD has failed to comply with RCW 28A.642.010 or Chapter 392-190, W.A.C. and will issue a written decision to the Complainant and the ESD that addresses each allegation in the complaint and any other noncompliance issues it has identified. The written decision will include corrective actions deemed necessary to correct noncompliance and documentation the ESD must provide to demonstrate that corrective action has been completed.

All corrective actions must be completed within the timelines established by OSPI in the written decision unless OSPI grants an extension. If timely compliance is not achieved, OSPI may take action, including but not limited to referring the ESD to appropriate state or federal agencies empowered to order compliance.

A complaint may be resolved at any time when, before the completion of the investigation, the ESD voluntarily agrees to resolve the complaint. OSPI may provide technical assistance and dispute resolution methods to resolve a complaint.

J. Level Four - Administrative Hearing

A Complainant or ESD that desires to appeal the written decision of the Office of the Superintendent of Public Instruction may file a written notice of appeal with OSPI within thirty (30) calendar days following the date of receipt of that office's written decision. OSPI will conduct a formal administrative hearing in conformance with the Administrative Procedures Act, Chapter 34.05, RCW.

VI. Definitions of Prohibited Conduct

The sections below describe the specific forms of legally prohibited sex discrimination, sex-based harassment, and retaliation that are also prohibited under ESD Policy. Speech or conduct protected by the First Amendment will not be considered a violation of the ESD's Policy, though supportive measures will be offered to those impacted.

All offense definitions below encompass actual and/or attempted offenses.

"Consent," as defined in this policy, must be affirmative and consistent with RCW 28A.300.475, "affirmative consent means a conscious and voluntary agreement to engage in sexual activity as a requirement before sexual activity."

"Sex discrimination" means discriminatory different treatment with respect to a person's employment or participation in a ESD education program or activity based on sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. There are three types of sex discrimination, which are defined below: (A) different (or disparate) treatment, (B) disparate impact, (C) sex-based harassment

A. "Different (or disparate) treatment discrimination" means any intentional differential treatment of a person or persons that is based on a person's actual or perceived sex and that:

- Excludes a person from participation in;
- Denies a person benefits of; or
- Otherwise adversely affects a term or condition of a person's participation in a Recipient program or activity.

B. "Disparate Impact Discrimination" means policies or practices that appear to be neutral unintentionally result in a disproportionate impact on the basis of sex that:

- Excludes a person from participation in;
- Denies a person benefits of; or
- Otherwise adversely affects a term or condition of a person's participation in a Recipient program or activity.

C. "Sex-based harassment" is a form of sex discrimination and means

- Sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

There are different types of sex harassment, including "quid pro quo harassment," "hostile environment harassment," and certain specific sexual offenses defined further below.

D. "Quid pro quo harassment"

- An employee, agent, or other person authorized by the ESD to provide an aid, benefit, or service under the ESD's education program or activity explicitly or

impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

E. "Hostile environment harassment," which is defined as

- "Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment)."

Because students and employees can experience the continuing effects of off-campus harassment in the educational setting, the ESD will consider the effects of off-campus conduct when evaluating whether there is a hostile environment on campus. Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- The degree to which the conduct affected the Complainant's ability to access the recipient's education program or activity,
- The type, frequency, and duration of the conduct,
- The Parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each Party that may be relevant to evaluating the effects of the conduct,
- The location of the conduct and the context in which the conduct occurred, and
- Other sex-based harassment in the recipient's education program or activity.

F. "Sexual assault" means an offense classified as a forcible or nonforcible sex offense.

- ESD 112 recognizes "sexual assault" offenses as defined under [WAC 478-121-150: Sexual Assault](#) and the FBI's uniform crime reporting system which can be found at [nibrs_offense_definitions-2018.pdf](#).

G. "Dating violence" means violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim, and
- Where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship, (2) the type of relationship, and (3) the frequency of interaction between the persons involved in the relationship.

H. "Domestic violence" means felony or misdemeanor crimes committed by a person who:

- Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the ESD, or a person similarly situated to a spouse of the victim;
- Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- Shares a child in common with the victim; or
- Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

I. "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for the person's safety or the safety of others; or

- Suffer substantial emotional distress.

J. Under State law, sex-based harassment may also be:

- Acts of sexual violence;
- Unwelcome sexual or gender-directed conduct or communication that interferes with an individual's educational performance or creates an intimidating, hostile, or offensive environment;
- Unwelcome sexual advances;
- Unwelcome requests for sexual favors;
- Sexual demands when submission is a stated or implied condition of obtaining an educational benefit; and
- Sexual demands where submission or rejection is a factor in an academic or other school-related decision affecting an individual.

K. "Retaliation" means intimidation, threats, coercion, or discrimination

- Against any person for the purpose of interfering with any right or privilege secured by Title IX or this procedure or because the person reported information, made a complaint, was a witness or provided information, assisted, or participated or refused to participate in any manner in an investigation or appeal under Title IX or this process.