

## **SEXUAL HARASSMENT GRIEVANCE PROCESS**

The Board requires the following grievance process to be followed for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited as sexual harassment by Title IX. The Board directs the grievance process to be published in accordance with all statutory and regulatory requirements.

### **Definitions**

In addition to the definitions set forth in the Sexual Harassment Policy, the following definitions apply for Title IX policies and procedures:

**“Actual knowledge”:** notice of sexual harassment or allegations of sexual harassment to the District’s Title IX Coordinator or any official of the District who has authority to institute corrective measures on behalf of the District, or to any employee of an elementary or secondary school. This standard is not met when the only District employee with actual knowledge is the Respondent (as that term is defined below). “Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described.

**“Education program or activity”:** includes locations, events, or circumstances over which the District exercised substantial control over both the individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment, and the context in which the sexual harassment occurs.

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

**“Consent”:** means the willingness in fact for conduct to occur. An individual may, as a result of age, incapacity, disability, lack of information, or other circumstances be incapable of providing consent to some or all sexual conduct or activity. Neither verbal nor physical resistance is required to establish that an individual did not consent. District officials will consider the totality of the circumstances in determining whether there was consent for any specific conduct. Consent may be revoked or withdrawn at any time.

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

**“Formal Complaint”:** a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the District investigate the allegation of sexual harassment. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the Formal Complaint is filed. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator. At the time of filing a Formal Complaint with the District, a Complainant must be participating in or attempting to participate in the District’s education program or activity.

**“Supportive measures:”** non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or 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 the District’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District’s educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The District will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures.

### **District Requirements**

When the District has actual knowledge of sexual harassment in an education program or activity of the District, the District will respond promptly in a manner that is not deliberately indifferent. The District will follow the grievance process outline herein as well as the applicable Title IX regulations (34 CFR Part 106). When the harassment or discrimination on the basis of sex does not meet the definition of sexual harassment, the Title IX Coordinator will direct the individual to the applicable sex discrimination process for investigation.

The District treats individuals who are alleged to be the victim (Complainant) and perpetrator (Respondent) of conduct that could constitute sexual harassment equitably by offering supportive measures. Supportive measures are designed to restore or preserve equal access to the District’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District’s educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual restrictions on contact between the parties, leaves of absence, increased security and monitoring of certain areas of the District’s property, campus escort services, changes in work locations and other similar measures.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Upon the receipt of a complaint, the Title IX Coordinator must promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant’s wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint. If the District does not provide the Complainant with supportive measures, then the District must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

### **Timelines**

The District has established reasonably prompt time frames for the conclusion of the grievance process, including time frames for filing and resolving appeals and informal resolution processes. The grievance process may be temporarily delayed or extended for good cause. Good cause may

include considerations such as 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. In the event the grievance process is temporarily delayed for good cause, the District will provide written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action.

### **Response to a Formal Complaint**

At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the District with which the Formal Complaint is filed. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, by electronic mail, or other means designated by the District.

The District must follow the Formal Complaint process before the imposition of any disciplinary sanctions or other actions that are not supportive measures. However, nothing in this policy precludes the District from removing a Respondent from the District's education program or activity on an emergency basis, provided that the District undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal. Nor does it preclude the District from placing a non-student employee Respondent on administrative leave during the pendency of the grievance process. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

Upon receipt of a Formal Complaint, the District must provide written notice to the known parties including:

1. Notice of the allegations of sexual harassment, including information about the identities of the parties involved in the incident, the conduct allegedly constituting sexual harassment, the date and location of the alleged incident, and any sufficient details known at the time. Such notice must be provided with sufficient time to prepare a response before any initial interview;
2. An explanation of the District's investigation procedures, including any informal resolution process;
3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made by the Decision-Maker at the conclusion of the investigation;
4. Notice to the parties that they may have an advisor of their choice who may be, but is not required to be, an attorney, and may inspect and review any evidence at the appropriate time; and
5. Notice to the parties of any provision in the District's code of conduct or policy that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the District decides to investigate allegations about the Complainant or Respondent that are not included in the notice initially provided, notice of the additional allegations must be provided to known parties.

The District may consolidate Formal Complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

### **Investigation of a Formal Complaint**

When investigating a Formal Complaint and throughout the grievance process, the District must:

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the District and not the parties;
2. Provide initial notice of the complaint to the parties;
3. Provide an equal opportunity for the parties to present witnesses and evidence;
4. Not restrict either party's ability to discuss the allegations under investigation or to gather and present relevant evidence;
5. Allow the parties to be accompanied with an advisor of the party's choice who may be, but is not required to be, an attorney. The District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
6. Provide written notice of the date, time, location, participants, and purpose of any interview or meeting at which a party is expected to participate, with sufficient time for the party to prepare to participate;
7. Provide the parties equal access to review all the evidence collected which is directly related to the allegations raised in a Formal Complaint and comply with the review periods outlined in this process;
8. Objectively evaluate all relevant evidence without relying on sex stereotypes;
9. Ensure that Title IX Coordinators, Investigators, Decision-Makers and individuals who facilitate an informal resolution process, do not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent;
10. Not make credibility determinations based on the individual's status as Complainant, Respondent, or witness;
11. Not use questions or evidence that constitute or seek disclosure of privileged information unless waived.

### **Dismissal of Formal Complaints**

If the conduct alleged in the Formal Complaint would not constitute sexual harassment even if proved, did not occur in the District's education program or activity, or did not occur against a person in the United States, then the District must dismiss the Formal Complaint with regard to that conduct for purposes of sexual harassment under the District's policy, federal law and regulations.

The Title IX Coordinator also may dismiss the Formal Complaint or any allegations therein at any time during the investigation or hearing, if applicable, when any of the following apply:

1. A Complainant provides written notification to the Title IX Coordinator that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
2. The Respondent is no longer enrolled or employed by the District; or
3. Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon dismissal, the Title IX Coordinator promptly sends written notice of the dismissal and the reasons for dismissal simultaneously to both parties.

### **Evidence Review**

The District provides both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation. The evidence provided by the District must include evidence that is directly related to the allegations in the Formal Complaint, evidence upon which the District does not intend to rely in reaching a determination regarding responsibility, and any inculpatory or exculpatory evidence whether obtained from a party or other source. Prior to completion of the Investigative Report, the Title IX Coordinator must send to 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 have ten (10) calendar days to submit a written response to the Title IX Coordinator, which the Investigator will consider prior to completion of the Investigative Report.

### **Investigative Report**

The Investigator must prepare an Investigative Report that fairly summarizes relevant evidence and will send the report to the Title IX Coordinator. The Title IX Coordinator must send to each party and the party's advisor, if any, the Investigative Report in an electronic format or a hard copy, for their review and written response. The parties have ten (10) calendar days to submit a written response to the Title IX Coordinator.

### **Decision-Maker's Determination**

The Investigative Report is submitted to the Decision-Maker. The Decision-Maker cannot be the same person(s) as the Title IX Coordinator or the Investigator. The Decision-Maker cannot hold a hearing or make a determination regarding responsibility until ten (10) calendar days from the date the Complainant and Respondent receive the Investigative Report.

Prior to reaching a determination regarding responsibility, the Decision-Maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. 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. Questions must be submitted to the Title IX Coordinator within three (3) calendar days from the date the Complainant and Respondent receive the Investigative Report.

The Decision-Maker must issue a Written Determination regarding responsibility based on a preponderance of the evidence standard. The Decision-Maker's Written Determination must:

1. Identify the allegations potentially constituting sexual harassment;
2. Describe the procedural steps taken, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held;
3. Include the findings of fact supporting the determination;
4. Draw conclusions regarding the application of any District policies and/or code of conduct policies to the facts;
5. Address each allegation and a resolution of the complaint including a determination regarding responsibility, the rationale therefor, any recommended disciplinary sanction(s) imposed on the Respondent, and whether remedies designed to restore or preserve access to the educational program or activity will be provided by the District to the Complainant; and
6. The procedures and permissible bases for the Complainant and/or Respondent to appeal the determination.

A copy of the Written Determination must be provided to both parties simultaneously, and generally will be provided within sixty (60) calendar days from the District's receipt of a Formal Complaint.

The determination regarding responsibility becomes final either on the date that the District provides the parties with the Written Determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. Where a determination of responsibility for sexual harassment has been made against the Respondent, the District will provide remedies to the Complainant that are designed to restore or preserve equal access to the District's education program or activity. Such remedies may include supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. The Title IX Coordinator is responsible for effective implementation of any remedies. Following any determination of responsibility, the District may implement disciplinary sanctions in accordance with state or federal law and or/the negotiated agreement. For students, the sanctions may include disciplinary action, up to and including

permanent exclusion. For employees, the sanctions may include any form of responsive discipline, up to and including termination.

### **Appeals**

Either the Complainant or Respondent may appeal the Decision-Maker's determination regarding responsibility or a dismissal of a Formal Complaint, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time that could affect the outcome; and
3. The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent that affected the outcome.

The request to appeal must be made in writing to the Title IX Coordinator within ten (10) calendar days after the date of the Written Determination. The appeal Decision-Maker must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent, and cannot be the Title IX Coordinator, the Investigator, or the Decision-Maker from the original determination.

The appeal Decision-Maker must notify the other party in writing when an appeal is filed and give both parties a reasonable equal opportunity to submit a written statement in support of, or challenging, the outcome. After reviewing the evidence, the appeal Decision-Maker must issue a written decision describing the result of the appeal and the rationale for the result. The decision must be provided to both parties simultaneously, and generally will be provided within ten (10) calendar days from the date the appeal is filed.

### **Informal Resolution Process**

Except when concerning allegations that an employee sexually harassed a student, at any time during the Formal Complaint process and prior to reaching a determination regarding responsibility, the District may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and determination of responsibility, provided that the District:

1. Provides to the parties a written notice disclosing:
  - A. The allegations;
  - B. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Title IX Formal Complaint process with respect to the Formal Complaint; and

- C. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
2. Obtains the parties' voluntary, written consent to the informal resolution process.

The informal resolution process generally will be completed within thirty (30) calendar days, unless the parties and the Title IX Coordinator mutually agree to temporarily delay or extend the process. The formal grievance process timelines are stayed during the parties' participation in the informal resolution process. If the parties do not reach resolution through the informal resolution process, the parties will resume the Formal Complaint grievance process, including timelines for resolution, at the point they left off.

### **Responsibility under Title IX**

Following the completion of the District's grievance process, any student who is found by the evidence to more likely than not have engaged in sexual harassment will be subject to disciplinary action up to, and including, expulsion. No disciplinary sanction or other action that is not a supportive measure may be taken against a Respondent until the conclusion of the grievance process.

Students who knowingly fabricate allegations of sexual harassment or purposely provide inaccurate facts shall be subject to disciplinary action up to and including expulsion. A determination that the allegations do not rise to the level of sexual harassment alone is not sufficient to conclude that any party made a false allegation or materially false statement in bad faith.

### **Recordkeeping**

The District must maintain for a period of seven (7) years records of:

1. Each sexual harassment investigation, including any determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the District's education program or activity;
2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom; and
4. All materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an informal resolution process. The District must make these training materials publicly available on its website.

The District must create, and maintain for a period of seven (7) years, records of any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment. In each instance, the District must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the District's education program or activity.



**Spearfish School District 40-2**

**5000 Students**

Administrative Regulation

CODE: 5130AR/4101AR

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The District's Sexual Harassment Policy and Grievance Process is intended to comply with Title IX of the Education Amendments of 1972, and the related federal regulations found at 34 CFR Part 106.

LEGAL REFS.:

Education Amendments of 1972, Title IX; 20 USC 1681 et seq.

Civil Rights Act, Title VI; 42 USC 2000d et seq.

Civil Rights Act, Title VII; 42 USC 2000e et seq.

Executive Order 11246, as amended by Executive Order 11375

Equal Pay Act; 29 USC 206

34 CFR Part 106

District Sexual Harassment Policy

District Nondiscrimination on the Basis of Sex Policy

Adopted

January 10, 2022